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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 82 5046

OWEN W. CRUMPACKER, Appellant,

v.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

JURISDICTIONAL STATEMENT

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Pro se

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This is an appeal from a final judgment in a criminal case entered by the Supreme Court of Indiana, the court of last resort. The court tried and convicted appellant, the defendant below, of the statutory crime of indirect criminal contempt sentencing him to serve 90 days in the Indiana State Farm. In addition, the court fined appellant, a private citizen, $500 and sentenced him to a concurrent term of 90 days in the Indiana State Farm for the statutory crime of direct criminal contempt, both terms to be served concurrently. Appellant was denied bail and completed serving his time on May 11, 1982. The prosecution arose out of an original action filed in the Supreme Court of Indiana on September 17, 1974 seeking to disbar appellant, who, prior to November 29, 1978 was a member in good standing of the bar of the Indiana Supreme Court.

QUESTIONS PRESENTED BY THE APPEAL

1. Whether Burns Indiana Statutes Annotated, Code Edition, Title 33 § 33-2-1-4 (4-110), is violative of the IVth, Vth (double

jeopardy and due process provisions), VIth (speedy and public trial by an impartial jury in the district wherein the crime shall have been committed, right to be informed as to the nature and cause of the accusation, compulsory process for obtaining witnesses, assistance of counsel for his defense), VIIIth (excessive bail and cruel and unusual punishment) and XIVth (due process and equal protection) Amendments to the United States Constitution.

2. Whether Burns § 33-2-1-4 (4-110), supra, vests the Supreme Court of Indiana with original jurisdiction to institute, prosecute, and convict a private citizen of the statutory crimes of direct and indirect criminal contempt.

3. Whether the void character of the disbarment order (violation of the double jeopardy and due process clauses of the Vth and XIVth Amendments to the Constitution) may be urged as a defense in a prosecution by the Supreme Court of an individual for alleged indirect criminal contempt for violating that order.

4. Whether the due process clauses of the Vth and XIVth Amendments to the United States Constitution prevent the Supreme Court of Indiana from acting as judge of criminal charges filed and prosecuted by it.

5. Whether the Supreme Court of Indiana was obliged to afford appellant compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense pursuant to the provisions of Amendment VI of the United States Constitution.

6. Whether the Supreme Court of Indiana was compelled to permit appellant to appear before it, pro se, in oral argument on the evidence in accordance to the VIth Amendment of the United States Constitution prior to the entry of its findings and judgment against him.

7. Whether the due process clause of the Vth Amendment to the United States Constitution precludes prosecution and imprisonment

for alleged violation of an order that is vague and indefinite. ("It is therefore ordered that . . . the Respondent be, and he hereby is disbarred as an attorney in the State of Indiana.")

8. Whether appellant, under the due process clause of the Vth Amendment, had an absolute right to be physically present in open court (or in chambers) when the Supreme Court of Indiana rendered its findings and judgment finding him guilty and sentencing him to prison.

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OPINIONS BELOW

The findings and decisions of the Supreme Court of Indiana appear in the appendix herein, p. 1a, et sequitur, infra.

The Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer appointed by the Supreme Court to hear and determine the initial charges filed against appellant on September 17, 1974 are not reported. They were filed by the Hearing Officer, Judge Bruce W. Douglas of the Porter Superior Court, Valparaiso, Indiana on November 9, 1976 and are reprinted in the appendix herein, p. 1a thru p. 15a, infra.

The 27 - page Disciplinary Action filed, per curiam, in the office of the Clerk of the Indiana Supreme Court at Indianapolis, Indiana on November 29, 1978 is reported in 269 Ind. 630, 383 N.E. 2d 36. It is reprinted at pages 1b through 27b of the appendix, infra. The 10-page findings and sentence, captioned "Contempt Proceedings," are reported officially in ___ Ind. ___, 431 N.E. 2d. 91 (1982). The decision, opinion, and judgment were filed in the office of the Clerk of the Supreme Court on February 11, 1982. They are reprinted at pages 1c through 10c of the appendix, infra. The Order of Commitment appears at appendix 1d-2d, infra. An order was entered on February 5, 1982 denying appellant's "Motion to Strike and Expunge Order to Appear for Pronouncement of Judgment Filed on January 27, 1982, for Lack of Jurisdiction Over the Person of the Purported Respondent, Owen W. Crumpacker, and the Subject Matter of the Proceedings" (see appendix 1e, infra).

Appellant's motion to stay execution and fix bail pending an appeal to this Court was denied on the same day that the contempt findings and sentence were announced in open court and filed. Appellant's Notice of Appeal was filed on February 5, 1982. It is attached to this Jurisdictional Statement at p. 1g of the Appendix, infra.

The 27-page Disciplinary Action of November 29, 1978, concludes as follows:

> "It is therefore ordered that by reason of the misconduct found in this cause the Respondent be and hereby is disbarred as an Attorney in the State of Indiana." (App., p. 24b-p. 25b, infra.

The alleged act of direct criminal contempt occurred on July 2, 1981 and was taken under advisement:

> JUDGE GIVAN: Mr. Crumpacker, I have told you and told you that we want you to quit this filibustering; and we want you to proceed for the record. Now you have consistently refused to do that. I want to dictate to the Reporter.
>
> Miss Reporter, show that Mr. Crumpacker has refused repeatedly the admonitions of this Court to proceed with this matter. In so doing he has shown contempt for this Court and this Court's processes.
>
> Now, Mr. Crumpacker, do you have an answer for that citation?
>
> MR. CRUMPACKER: Yes. Your Honor, I apologize; and I want the Court to understand that it is not my offense -- my desire to offend the Court and I'm deeply apologetic; and my only feeling is that I think in the preparation of my defense that the evidence is material and I will not -- if the Court believes that the motion is denied, I will accept and abide by the ruling of the Court; and I hope that I will be able to proceed with the defense.

Appellant received the maximum sentence authorized by the criminal contempt statutes, Burns' Ind. Codes St., Title 34, 34-4-7-3 (3-903) Indirect and 34-4-7-1 (3-901) Direct:

> "In view of our findings, the Respondent, Owen W. Crumpacker, is sentenced to serve a term of ninety days in the Indiana State Farm for indirect criminal contempt of this Court, sentenced to serve a concurrent term of ninety days in the Indiana State Farm for the direct criminal contempt of this Court, and is further fined in the amount of five hundred dollars ($500.00). Those provisions of law authorizing the diminution of sentence for good time served shall not apply." (See App. p. 10c, infra.)

JURISDICTION

A concise statement of the grounds on which the jurisdiction of the court is invoked is as follows:

(i) On September 17, 1974, the proceedings below were commenced as an original action in the Indiana Supreme Court. The charges against appellant, a practicing attorney, were prepared in secret in mid-August of 1974 by a group of Hammond, East Chicago, and Gary lawyers who were either adversaries of appellant's clients or represented adversaries of appellant's clients in pending litigation. The Hearing Officer appointed by the Supreme Court to hear and determine the charges found in appellant's favor on each of the 20 counts or charges leveled against appellant. The decision was filed on November 9, 1976. No further hearings were held or had, and no evidence was offered or received after November 9, 1976. (See appendix p. 1a, infra.)

On November 29, 1978, a 27-page Disciplinary Action, per curiam, was either filed or permitted to be filed in the office of the Clerk of the Indiana Supreme Court purporting to permanently disbar appellant as an attorney in Indiana. (See appendix, p. 1b, infra.)

On January 23, 1981, the Supreme Court of Indiana, through its disciplinary arm, appellee Indiana Supreme Court Disciplinary Commission, instituted criminal contempt proceedings against appellant for alleged willful and intentional refusal to obey the permanent disbarment order of November 29, 1978 appearing in the 27-page Disciplinary Action. The Supreme Court conducted the trial on June 29, July 2, July 16, and July 21, 1981.

On February 11, 1982, a 10-page document captioned "Contempt Proceedings" was served upon appellant and filed with the Clerk of the Indiana Supreme Court. Simultaneously an order of commitment signed by the Chief Justice was served and filed. Appellant's motion for stay and to fix bail to enable him to appeal was denied. Appellant's motion for a temporary postponement of the execution of the order of commitment was denied. Appellant was taken into custody by the sheriff of the Indiana Supreme Court and two members of the state police and transported to the Department of Correction (Indiana State Farm) at Putnamville, Indiana. Appellant's further motion for a stay and to fix bail was denied by this Court. He served out the full term of his sentences, without time off for good behavior (which he earned), and was released on May 11, 1982. (See appendix, p. 1c-p. 10c, p. 1d and p. 1e, infra).

(ii) The judgment sought to be reviewed was agreed upon internally and in a secret session on January 27, 1982. Appellant's notice of appeal was served and filed in the Indiana Supreme Court on February 5, 1982. The judgment was officially released and served upon appellant by the sheriff of the Indiana Supreme Court in open court and filed of record with the clerk on February 11, 1982.

The time for filing the jurisdictional statement was extended to and including July 11, 1982.

(iii) Appellant contends that the statute by virtue of which the Supreme Court of Indiana has proceeded to charge, try and convict him, i.e. IC 33-2-1-4, is repugnant to Amendments IV, V, VI, VIII and XIV of the United States Constitution. 28 U.S.C. § 1257(b). Appellant asserts that his appeal is entitled to priority under 28 U.S.C. § 2102.

Appellant is obliged to proceed pro se and in forma pauperis. The initial attack upon appellant in the Supreme Court of Indiana was launched by Hammond attorney Edmond J. Leeney, now deceased, on January 22, 1972 in the case of Armina Thorpe v. The Calumet National Bank of Hammond, Administrator. The attack took the form of private correspondence by Mr. Leeney with Chief Judge Norman F. Arterburn of the Indiana Supreme Court. The Leeney charges were abandoned in favor of the written grievance of Hammond attorney Saul I. Ruman filed on September 25, 1973 with the executive secretary of the Indiana Supreme Court Disciplinary Commission, one John B. Ramming. On June 14, 1974, East Chicago attorney Rudolph Val Dawson obtained a resolution from the Disciplinary Commission authorizing the interested attorneys to proceed on the Saul I. Ruman complaint. None of these activities were disclosed to appellant. Appellant has been required to exhaust all of his financial means in an effort to protect and preserve his professional standing and his personal liberty.

The final judgment in a criminal proceeding is the sentence. Berman v. United States, 302 U.S. 211; Parr v. United States, 351 U.S. 513, 518. The judgment of the Indiana Supreme Court announced and filed on February 11, 1982 is final in all respects. The fact that appellant was compelled to serve the full sentence pronounced does not make the issues presented moot.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

AMENDMENT IV--SEARCHES AND SEIZURES. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S.C.A., Const., p. 361).

AMENDMENT V--CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (U.S.C.A., Const., p. 4).

AMENDMENT VI--JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. (U.S.C.A., Const., p. 4)

AMENDMENT VIII--EXCESSIVE BAIL, FINES, PUNISHMENTS. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (U.S.C.A., Const., p. 758).

AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S.C.A., Const., p. 33)

ARTICLE 1, BILL OF RIGHTS, SECTION 11--Unreasonable search or seizure.--The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized. (Burns Ind. Stat. Ann. Code Ed., Const., p. 10).

ARTICLE 1, BILL OF RIGHTS, SECTION 12--Courts open--Due course of law--Administration of justice. All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay. (Burns Ind. Stat. Ann. Code Ed., Const., p. 21).

ARTICLE 1, BILL OF RIGHTS, SECTION 13--Rights of accused. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. (Burns Ind. Stat. Ann. Code Ed., Const., p. 36).

ARTICLE 1, BILL OF RIGHTS, SECTION 14--Former jeopardy--Self-incrimination. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself. (Burns Ind. Stat. Ann. Code Ed., Const., p. 55,)

ARTICLE 1, BILL OF RIGHTS, SECTION 16--Excessive bail, punishment, and penalties. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense. (Burns Ind. Stat. Ann. Code Ed., Const., p. 64.)

ARTICLE 1, BILL OF RIGHTS, SECTION 17--Bailable offenses. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong. (Burns Ind. Stat. Ann. Code Ed., Const., p. 68,)

INDIANA CONSTITUTION, ARTICLE 7, JUDICIAL, SECTION 7--Jurisdiction of Supreme Court. The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; discipline, removal and retirement of justices and judges; supervision of the exercise of jurisdiction by the other courts of the State; and issuance of writs necessary or appropriate in aid of its jurisdiction. (Burns Ind. Stat. Ann. Code Ed., Const., p. 209.)

ARTICLE 1, CHAPTER 5, TITLE 33, SECTION 33-1-5-1 (4-7401)--Unlawful practice--Prohibition. It is hereby made unlawful and a violation of this act (33-1-5-1--33-1-5-3) for any person to hold himself out as a practicing lawyer, to conduct the trial of a case in any circuit, criminal, city, justice, probate, juvenile, commissioners, or any other court of this state, or to engage in the business of a practicing lawyer, without first having been duly admitted as an attorney-at-law in some court of general jurisdiction or of appellate jurisdiction of this state. (Acts 1913, ch. 347 § 1, p. 940.) (Burns Ind. Stat. Ann. Code Ed., Title 33, p. 9.)

ARTICLE 1, CHAPTER 5, TITLE 33, SECTION 33-1-5-2 (4-7402)--Penalty. Any person who shall violate any of the provisions of this act (33-1-5-1--33-1-5-3) shall be deemed guilty of a misdemeanor and, on conviction thereof, may be fined in any sum not exceeding $100, to which may be added imprisonment in the county jail not exceeding thirty (30) days. (Acts 1913, ch. 347, § 2, p. 940.) (Burns Ind. Ann. Code Ed., Title 33, p. 11.)

ARTICLE 2, CHAPTER 1, TITLE 33, SECTION 33-2-1-4 (4-110)--Oaths--Fines for contempt. Such court shall have full power to impose and administer all necessary oaths; to punish by fine and imprisonment for contempt of its authority and process; and to compel the attendance of witnesses by attachment and fine. (2 R. S. 1852, ch. 1, § 6, p. 1.) (Burns Ind. Ann. Code Ed., Title 33, p. 34.)

ARTICLE 2, CHAPTER 3, TITLE 33, SECTION 33-2-3-1 (4-7405)--Admission to practice law--Restraint against unauthorized practice--Jurisdiction of Supreme Court. The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe. (Acts 1931, ch. 64, § 1, p. 150; 1951, ch. 143, § 1, p. 382.) (Burns Ind. Stat. Ann. Code Ed. Title 33, p. 35.)

ARTICLE 4, CHAPTER 7, TITLE 34, SECTION 34-4-7-1 (3-901)--Direct--Disturbing business of court. Every person who shall, by the commission of any felony, misdemeanor, or other unlawful act; or who by talking, moving about, or by signs, or gestures, or in any other manner, in any court of record, while the same is open for the transaction of business, and engaged therein, create any noise or confusion therein, whereby the business and proceedings of said court shall be disburbed, shall be deemed to be guilty of a direct contempt of said court. (Acts 1879 (Spec. Sess.), ch. 35, § 1, p. 112.) (Burns Ind. Stat. Ann. Code Ed. Title 34, p. 735.)

ARTICLE 4, CHAPTER 7, TITLE 34, SECTION 34-4-7-3 (3-904)--Indirect--Disobeying process. Every person who shall be guilty of any wilful disobedience of any process, or any order lawfully issued by any court of record, or by the proper officer thereof, under the authority of law, or the direction of such court, after the same shall have been served upon him, shall be guilty of an indirect contempt of the court from which such process or order shall have issued. (Acts 1879 (Spec. Sess.), ch. 35, § 3, p. 112.) (Burns Ind. Stat. Ann. Code Ed. Title 34, p. 738.)

ARTICLE 4, CHAPTER 7, TITLE 34, SECTION 34-4-7-6 (3-906)--Punishment. Punishments for contempts of court, under this act (34-4-7-1--34-4-7-10), may be by fine or imprisonment, or both, in the discretion of the court inflicting the same, but no fine shall exceed the sum of five hundred dollars ($500), nor shall any imprisonment extend beyond the term of three (3) months. (Acts 1879 (Spec. Sess.), ch. 35 § 6, p. 112.) (Burns Ind. Stat. Ann. Code Ed. Title 34, p. 742.)

CONCISE STATMENT OF THE CASE

A. Stage in the Proceedings at Which the Questions were Raised

(1) The verified information for contempt alleging twenty-nine (XXIX) counts of alleged "unauthorized practice of law" was filed in the Supreme Court of Indiana on January 23, 1981. A show cause order issued over the signature of Richard M. Givan, Chief Justice of Indiana, returnable at the Supreme Court chambers, State House, Indianapolis, Indiana on March 2, 1981 was served upon appellant by the sheriff of Lake County on February 13, 1981. On February 27, 1981 appellant appeared by attorney John M. Lyons and filed his verified motion to quash the show cause order and to dismiss the verified information for contempt on the ground that the proceedings were fully and finally put at rest by the findings entered by the Hearing Officer in appellant's favor on November 9, 1976. Appellant urged that the 27-page Disciplinary Action either filed or permitted to be filed on November 29, 1978 was void for lack of notice and/or hearing and that the Supreme Court of Indiana lost all jurisdiction over the person of appellant and the subject matter of the proceedings when the Supreme Court, on April 12, 1979, entered an order overruling and denying appellant's motion for relief from and reconsideration of the Disciplinary Action entered on November 29, 1978. The motion was supplemented on June 29, 1981 by the filing of a verified motion to strike and dismiss and an amended and supplemental motion to strike and dismiss the verified motion for contempt and petition for order to show cause. Appellant urged that the Supreme Court of Indiana declare Burns Indiana Statutes Annotated, Code Edition, Title 33 § 33-2-1-4 (4-110) void as being repugnant to Amendments V, VI, and XIV of the United States Constitution and the Federal Civil Rights Act § 42 U.S.C. 1983 and § 42 U.S.C. 1985. The question was again raised as to the void character of the statute under

which the Supreme Court of Indiana was proceeding in the third and fifth paragraphs of appellant's verified return (answer) to the verified information for contempt. The Supreme Court overruled appellant's motions, at the commencement of the trial on June 29, 1981. The Supreme Court disposed of the issue raised by the third and fifth paragraphs of answer in the 10-page, per curiam decision filed on February 11, 1982:

> A second general area of contention raised in Respondent's return can be summarized as an assertion that the present contempt proceeding is unconstitutional. Respondent argues that because the unauthorized practice of law could be a crime, the contempt proceeding is unconstitutional in that it does not afford the safeguards available to a criminal defendant, citing State ex rel Indianapolis Bar Assn. v. Fletcher Trust Company, (1936) 211 Ind. 57, 5 N.E.2d 538. Respondent goes on to conclude that IC 33-2-1-4, which specifically gives this Court statutory authority to punish for the contempt, is unconstitutional. This latter allegation is unsupported by authority. (Appendix, p. 4c, infra.)

(2) The issue as to whether or not the Supreme Court of Indiana, sitting in Marion County has jurisdiction to institute and prosecute criminal proceedings against a private citizen living in Lake County for crimes allegedly committed in Lake County was raised in the same motions and verified returns (answers) herein above referred to. The issue was disposed of in the same manner:

> "It is not surprising that Respondent fails to cite any authority for his contention that IC 33-2-1-4 is unconstitutional. There is none. There is no doubt this Court possesses inherent and statutory power to punish by fine and imprisonment for contempt of its authority and powers. In re Lemond, (1980) Ind., 413 N.E.2d 228, In re Perrello, (1973) 260 Ind. 26, 291 N.E.2d 698. (Our emphasis) (Appendix, p. 5c, infra.)

(3) The void character of the disbarment order as a defense to the criminal contempt prosecution was urged in the motion to strike and dismiss and the amended and supplemental motion to strike and dismiss served and filed on June 29, 1981. When appellant's motions were overruled in open court on June 29, 1981,

he re-urged the void character of the November 29, 1978 Disciplinary Action in his third and fourth paragraphs of return (answer). The Supreme Court ruled adversely in the per curiam contempt decision:

> "Respondent further alleges that this Court's Order of Disbarment was entered without hearing and notice, that the findings of the hearing officer appointed in the disciplinary action constituted the final adjudication of the issues and the Respondent was subjected to double jeopardy in that the Hearing Officer entered findings of fact and the Supreme Court did not accept such findings. In sum, Respondent is attempting to attach constitutional import to this Court's failure to adopt the Hearing Officer's findings." (Appendix, p. 3c, infra.)
>
> * * *
>
> "In view of the above considerations, we find all arguments of Respondent to the effect that this Court's order of disbarment entered November 29, 1978, is void to be without merit. We specifically find such order valid; the Respondent was disbarred as an attorney in this state on that date." (Appendix, p. 4c, infra.)

(4) Appellant raised the due process issue with reference to the Court acting as prosecutor and judge at his earliest opportunity and on the first day of the trial, before any evidence was introduced. (tr. vol. one, p. 14.) The Court, speaking through Givan ruled: "We are going to overrule the motion for this Court to disqualify itself." On July 2, 1981, appellant served and filed an extensive motion to vacate and set aside the per curiam Disciplinary Action of November 29, 1978 and to dismiss the amended verified complaint for Disciplinary Action. A 59-page supporting affidavit was filed on July 10, 1981. The Court, as disclosed on the face of the decision, proceeded to find appellant guilty and sentence him to imprisonment.

(5) Appellant's counsel, John M. Lyons, was granted leave to withdraw his appearance on June 22, 1981, (seven days in advance of the trial and before the Court had ruled on the motion to strike and dismiss). When the order arrived in the mail on Thursday, June 25, 1981, appellant telephoned the Court asking for a continuance to enable him to obtain counsel. The request was denied. (Appendix, p. 1g, infra.)

The motion was renewed orally before the commencement of the trial on Monday, June 29, 1981. The Court refused to permit the appellant to have counsel: "Judge Hunter: The opinion of those Constitutions is to the effect that you have a right to represent yourself." (tr. vol. one, p. 8.)

(6) The question of appellant's right under the VIth Amendment to argue the case was presented after the submission of evidence was concluded on July 21, 1981. Appellant was directed to file purposed findings of fact. (Appendix, p. 1c, infra.) As soon as the court reporter had completed the preparation of the transcript of the evidence, and after the purposed findings were filed, appellant served and filed a written request for oral argument before the Court on the question of special findings of fact. Attached to the request was a copy of the opinion of the Supreme Court of the United States in the case of Herring v. New York 422 U.S. 852, 95 Supreme Court 2550 (1975). The Court's ruling was entered in secret on January 27, 1982. It was revealed of record in the 10-page per curiam decision filed on February 11, 1982: "Lastly, Respondent's Motion for Oral Argument is now overruled." (Appendix, p. 2c, infra.)

(7) Whether the due process clause of the Vth Amendment bars prosecution because of the vague and indefinite character of the disbarment order was first presented in the verified motion to strike and dismiss served and filed on July 2, 1982, the second day of the trial. Appellant made demand upon the Court to define the conduct which would or might constitute "the illegal practice of law." Appellant cited, in his motion, the decision and opinion of the Indiana Supreme Court in the case of State ex rel Indianapolis Bar Association v. Fletcher Trust Company (1937) 211 Ind. 27. Appellant's motions for discharge and for the dissolution and dismissal of the verified information were denied in the per

curiam decision filed on February 11, 1982. (See Contempt Proceedings, Appendix, p. 2c, infra.)

(8) Appellant's constitutional right to be physically present when the judgment was entered was first presented in his motion to be released from confinement filed on or about March 15, 1982. Before being taken to Putnamville on February 11, 1982, the Court administrator, Bruce Kotzan, advised appellant that the Court had an internal docket in the case. On February 11, 1982, it became apparent that the per curiam decision, 10 pages in length, had been prepared on or before January 27, 1982 when the order to appear for sentencing had been entered and sent to the sheriff of Lake County for service upon the appellant. The petition for release from confinement was ignored.

B. Statement of Facts Material to a Consideration of the Questions Presented

(1) Appellant Owen W. Crumpacker, is and has been for many years a citizen, resident, voter, and taxpayer of Hammond, Lake County, Indiana residing at 17 Glendale Park. He is a citizen of the United States within the definition of the Constitution of the United States and the Federal Civil Rights Acts (42 USCA 1983, 1985, and 1988). He is 70 years of age and resides with his wife, Mary Eleanor N. Crumpacker, at the address hereinabove mentioned. Appellant was admitted to the bar of the Supreme Court of Indiana on January 4, 1939. He was engaged in the active practice of law with offices in Hammond until October 20, 1978. On October 20, 1978, appellant was the Republican candidate for Congress of the United States in the November 7, 1978 federal election. He was a candidate for the Republican nomination in the May 7, 1980 and May 5, 1982 primary elections. He was the duly elected Republican

precinct committeeman in the precinct of his residence and was the duly elected delegate to the Republican State Convention from his delegate district. In February and March of 1979, both appellant and his wife filed actions in the United States District Court in Hammond under the Federal Civil Rights Act and Organized Crime Control Acts. Both appellant and his wife had substantial interests in long pending condemnation cases involving land sought to be acquired by the Government in connection with the Indiana Dunes National Lake Shore Act of 1966.

One case in particular, E. D. Crumpacker and Dorothy A. Crumpacker v. Owen Windle Crumpacker et al. USDC Hammond Division, Civil No. 75-H-212 was being actively defended when the following entry was made on the bench docket sheet at Indianapolis on November 29, 1978:

> "It is therefore ordered that by reason of the misconduct found in this cause the Respondent be and hereby is disbarred as an Attorney in the State of Indiana." (See, In the Matter of Owen W. Crumpacker, Supreme Court of Indiana, Cause No. 974 S 187, filed November 29, 1978, and reported in 269 Ind. 630, 383 N.E.2d 36.) (See Appendix, Pages 1b through 27b, infra.)

(2) The verified petition for disciplinary action was filed in the Supreme Court of Indiana on September 17, 1974. Appellant, as respondent in the disciplinary action, in due course, filed answer to the twenty (20) Count amended verified complaint for disciplinary action. The first hearing officer chosen by the Supreme Court to hear and determine the charges, Honorable Alan Rasor, Judge of the Kosciusko Superior Court, granted appellant's (respondent's) motion for a public trial in the City and County of appellant's residence: Hammond, Indiana, and arranged for a hearing in the council chambers of the Hammond City Hall. In August of 1975, Judge Rasor vacaced all orders entered in February at the pretrial conference and resigned. The

Supreme Court, simultaneously with the acceptance of Judge Rasor's resignation, appointed Honorable Bruce W. Douglas, Judge of the Porter Superior Court, as its hearing officer (fact finder) to hear and determine the charges and to make specific findings of fact, enter conclusions of law, and make recommendations to the Supreme Court thereon. West's Ann. Ind. Code, Title 34, A & D Rule 23, § 14(f), p. 873.

(3) A prolonged adversary trial was conducted in the courtroom of the Porter Superior Court consuming thirty-one (31) trial days between September 29, 1974 and December 3, 1975. By agreement, the record was kept open to enable appellant to supply additional documents consisting mainly of court records.

(4) On November 9, 1976, the hearing officer, Judge Douglas, filed his specific findings of fact on each of the twenty (20) Counts tried, stated his conclusions of law thereon, and made his recommendations supported by a four thousand and seven hundred (4,700) page transcript and thousands of pages of exhibits. Appellant (respondent) was found innocent on each of the charges filed against him. A copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS of the hearing officer is attached hereto and made a part hereof as appellant's appendix, pages 1a through 15a, infra.

(5) Saul I. Ruman, a practicing lawyer, who, on September 25, 1973, had filed the original written grievance against appellant at the administrative level (A & D Rule 23, § 10, West's Title 34, p. 869) filed a petition for review. Appellant's objections and supplemental objections were filed over a period of a year. The Supreme Court of Indiana never ruled on the petition to review or the objections. (See, A & D Rule 23, § 15, West's Title 34, p. 874.) No hearings of any kind were held or had in the Supreme Court. The Clerk's docket sheet shows that the massive record was

never transmitted to the Supreme Court for examination. The last entry on the docket sheet, prior to November 29, 1978, reads as follows:

1978, Jan. 23 Order: Supplemental Objections III through VII are permitted to be filed in this cause. Givan, C.J.

The exhibits offered and received in evidence were in the basement of appellant's residence at 17 Glendale Park, Hammond, Lake County, Indiana, when the Disciplinary Action was filed or caused to be filed in the office of the Clerk of the Supreme Court of Indiana on November 29, 1978, as aforesaid. The exhibits had never been either submitted to or examined by the Supreme Court of Indiana. The transcript of the testimony and the proceedings held and had at the trial, some 4,700 pages in length, was never either examined by or read by the Supreme Court of Indiana or any member thereof prior to November 29, 1978.

(6) On November 29, 1978, appellant was in the LaPorte Hospital suffering from a stroke and cardiac infarction and was under the protective custody of the United States District Court, Hammond Divison, in a habeas corpus suit then on trial, to wit: United States of America ex rel. Owen W. Crumpacker, Petitioner v. James Arnold, Sheriff of LaPorte County, Respondent, et al., Misc. No. 403. The twenty-seven (27) page Per Curiam Disciplinary Action mentioned in rhetorical paragraph 1, supra, was filed at Indianapolis on November 29, 1978, and brought to Judge McNagny's attention in a front page Gary Post Tribune news story dated November 30, 1978. A copy of the twenty-seven (27) page document was delivered to Judge McNagny's chambers on December 4, 1978. Appellant (petitioner in the habeas corpus suit and respondent in the disciplinary case)

was released from custody in LaPorte pursuant to an order entered by the late Judge Phil M. McNagny, Jr., on December 13, 1978, to enable him to receive sophisticated heart and artery treatment in the Wesley Pavilion of the Northwestern Medical Center in Chicago.

(7) Upon his release from the LaPorte Hospital, and while confined to his residence, appellant, on December 16, 1978, filed a motion for stay of proceedings under Supreme Court A & D Rule 23, Sections 3, 26 and 27 (6). An order was entered on January 12, 1979 signed by Chief Justice Richard M. Givan denying the motion for a stay. Upon his release from the Northwestern Medical Center appellant prepared, served and filed a motion for relief from and reconsideration of the Disciplinary Action filed on November 29, 1978. The Court refused to grant appellant a hearing and, on April 12, 1979, through Chief Justice Givan, entered an order denying the motion for relief, etc.

(8) Notwithstanding the void character of the Disciplinary Action, appellant withdrew his appearance in all pending cases except certain actions in the United States District Court where appellant was representing personal financial interests of his own and which appearances were (and are) expressly authorized by orders of the United States District Court for the Northern District of Indiana and federal statutes such as the Federal Civil Rights Acts. Appellant has neither represented parties nor appeared for parties nor participated in any judicial actions other than actions to protect and preserve his personal liberty, civil, and property rights.

(9) On January 23, 1981, the Indiana Supreme Court, acting through its Disciplinary Commission, filed its VERIFIED INFORMATION FOR CONTEMPT AND PETITION FOR ORDER TO SHOW CAUSE against appellant, Owen W. Crumpacker, a citizen, resident, and taxpayer of Hammond, Lake County, Indiana. An ORDER TO SHOW CAUSE was issued over the

signature of the Honorable Richard M. Givan, Chief Justice of Indiana, returnable March 10, 1981. Appellant responded by preparing, serving and filing his verified MOTION TO QUASH ORDER TO SHOW CAUSE AND TO DISMISS VERIFIED INFORMATION FOR CONTEMPT AND PETITION FOR ORDER TO SHOW CAUSE for lack of jurisdiction over his person and the subject matter of the proceedings which had been terminated on November 29, 1978, by the filing of a twenty-seven (27) page Disciplinary Action.

(10) Appellant believed (and believes) that the twenty-seven (27) page Disciplinary Action is void as having been prepared and filed in violation of the Vth VIth, VIIIth and XIVth Amendments to the United States Consitution. Appellant was then put into jeopardy by the Disciplinary Action filed against him, and he was deprived of his life (professional), liberty (good name and reputation) and property (existing fees earned under contracts and the right to earn a living) without being accorded due process (notice and hearing) guaranteed under the Vth and XIVth Amendments. Appellant was denied the right to a speedy and public trial in the district of his residence, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel before the Supreme Court which convicted him, the right to summarize the evidence before the Supreme Court prior to the November 29, 1978, decision, and the right to be present at every critical stage of the proceedings that resulted in his ruin. Appellant was subjected to cruel and unusual punishment inflicted by the Supreme Court in violation of the VIIIth and XIVth Amendments. His existence, both professional and personal, had been under a cloud for ten (10) years. He has suffered under constant publicity in the form of news releases. He has been compelled to devote all of his time and money (in the

payment of counsel fees and court costs) defending himself against the twenty (20) Counts of alleged professional misconduct and in seeking his personal liberty. In no recorded case in any of the fifty (50) states has a lawyer prevailed at the trial only to suffer complete annihilation and devastation two (2) years later.

(11) Appellant's counsel, John M. Lyons of Valparaiso, Indiana was granted leave to withdraw his appearance for appellant on Monday, June 22, 1981. Appellant received notice of the order on Thursday, June 25, 1981 five (5) days before the contempt case was scheduled to go to trial. On Thursday, June 25, 1981, Chief Justice Richard M. Givan advised appellant that he would not be granted a continuance of the trial set for Monday, June 29, 1981 to enable him to obtain counsel to represent him in the proceedings. The motion to quash and dismiss previously filed had not been either presented or ruled upon prior to the withdrawal of appellant's attorney. Appellant appeared before the Supreme Court of Indiana in its courtroom in the State House at Indianapolis some 180 miles from appellant's residence at 10:00 a.m. on Monday, June 29, 1981. He renewed, orally, his motion for a continuance to enable him to employ counsel. He served and filed an amended and supplemental motion to strike and dismiss the verified information for contempt and the petition for an order to show cause and a further motion to strike and dismiss the Disciplinary Commission's complaint. Appellant moved for pretrial discovery, the production of documents, and the right to a pretrial conference. All of appellant's motions were overruled and denied without argument and the Supreme Court proceeded to put on its case, using Sheldon A. Breskow, executive secretary of the Indiana Supreme Court Disciplinary Commission as its attorney. The State of Indiana was not represented in the proceedings. As promptly as possible, appellant, acting pro se, prepared, served and filed a verified return (answer) denying

the allegations of the verified information for contempt filed over the signature of Sheldon A. Breskow on January 23, 1981. Four (4) additional paragraphs of affirmative defense, duly verified were prepared, served and filed by appellant on his own behalf.

(12) Appellant was tried by the Supreme Court of Indiana sitting en banc in its courtroom in the State House at Indianapolis on four (4) separate trial days, June 29, July 2, July 16 and July 21, 1981. The decision was taken under advisement. By order of the Supreme Court, the Disciplinary Commission and appellant filed proposed findings. This strategy was employed to enable the Court to offically approve the finding tendered by its own disciplinary arm. On September 24, 1981, appellant prepared, served and filed a "Motion for Oral Argument Before the Court on the Question of Special Findings of Fact" in accordance with the VIth Amendment to the United States Constitution as interpreted in the opinion of Mr. Justice Stewart in Herring v. New York, 422 U.S. 852, 95 S.Ct. 2550 (1975). The motion was not ruled upon until on or about January 27, 1982, when the ten (10) page document titled "Contempt Proceedings" was adopted internally. The ruling was not disclosed to appellant until February 11, 1982. The Motion was denied. (Oral argument had never been waived).

(13) The decision of the Supreme Court was filed with itself in chambers on January 27, 1982, in the form of a per curiam opinion, ten (10) pages in length, a copy of which is attached hereto as Appendix, pages 1c through 10c, infra. Its filing was noted, apparently, on an "internal docket sheet" kept by either a secretary of one of the judges or a court administrator. Neither the existence of the document nor its contents were disclosed to appellant until February 11, 1982. (Appellant filed his Notice of Appeal to the Supreme Court of the United States on February 5, 1982.)

(14) The Chief Justice of Indiana issued an Order to Appear for Pronouncement of Sentence which was filed with the Clerk of the Supreme Court on January 27, 1982, and served upon appellant in Lake County on February 2, 1982, by a deputy county sheriff. A copy of the Order is attached hereto as page 1f of the Appendix, infra. The Order conceals the fact that the findings convicting and judgment sentencing appellant had already been prepared and filed with itself in chambers:

> "This court, on its own Motion, having previously heard the contempt proceedings brought under this cause and examined all matters which have been filed by the parties, now finds that the respondent should be directed to appear for the pronouncement of this Court's judgment in the pending contempt proceedings."

(15) Appellant, on February 4, 1982, prepared, served and filed, by certified mail, an extensive Motion to Strike and Expunge the Order to Appear for lack of jurisdiction over the person of the appellant and the subject matter of the proceedings. Believing that the Court had already convicted him in absentia because of the unusual language in the Order to Appear, supra, appellant prepared, served and filed a Motion for Stay of Execution, requesting the Supreme Court to fix the amount of the bail bond. On February 8, 1982, appellant received an order dated February 5, 1982, overruling the Motion to Strike and Expunge Order to Appear for Pronouncement of Judgment, etc. No ruling was entered on the Motion for Stay of Execution and to Fix the amount of the Bond (bail) although the Court had the motion before it.

(16) Appellant and his wife and one of his daughters drove to Indianapolis on February 11th and appeared before the Supreme Court at 10:30 E.S.T. as ordered. The Chief Justice of Indiana speaking on behalf of the Court read the Commitment Order which contained a recital of a portion of the ten (10) page decision filed internally on January 27, 1982. Appellant was found guilty

of Direct Criminal Contempt and sentenced to serve ninety (90) days in the Indiana State Farm at Putnamville, Indiana. Appellant was also found guilty of Indirect Criminal Contempt and sentenced to serve ninety (90) days in the Indiana State Farm, both sentences to be served concurrently. Appellant was directed to surrender himself to the custody of the Sheriff of the Supreme Court by 2 o'clock p.m. to be taken to Putnamville. A copy of the Order of Commitment is attached as Appendix, pages 1d and 2d, infra. Appellant pressed the Court for a ruling on the pending Motion for Stay of Execution and the Fixing of Bail. The Court retired to chambers to prepare an Order denying Motion. The Motion for Stay and to Fix Bail was denied. Appellant's oral motion to change the date of the commencement of the commitment order to February 18, 1982, to enable him to go to Hammond and complete preparation of briefs in civil rights cases due in the Court of Appeals for the Seventh Circuit was denied. Appellant was taken to Putnamville by the Sheriff of the Supreme Court and two (2) members of the Indiana State Police.

(17) Appellant has never disputed the fact that his name was stricken from the roles of the bar of the Supreme Court of Indiana. This is a matter of record. His disbarment was a matter of great notoriety. There was no "holding out as a lawyer" or collection of fees, etc. Appellant reserved the right to prepare letters, papers, etc., in his own office, to assist those who needed help and could not get it from any other source. These are Ist and IVth Amendment rights.

(18) The main issue presented both in the Supreme Court of Indiana and an appeal to this Court is whether Burns' I.C. 33-2-1-4, as construed by the Supreme Court of Indiana, is in conflict with the Constitution and laws of the United States. It reads as follows:

"33-2-1-4 (4-110). Oathes - Fines for Contempt --

Such Court shall have full power to impose and administer all necessary oaths; to punish by fine and imprisonment for contempt of its authority and process; and to compel the attendance of witnesses by attachment and fine." (2 R.S. 1852, Ch. 1, 86, p. 1.)

This statute does not override and mullify the IVth, Vth VIth, and XIVth Amendment rights of a private citizen living in Northwest Indiana.

(19) The Indiana Constitution, Art. 1, § 17. Bailable offenses, provides: Offenses, other than murder or treason shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident, or the presumption strong. (Burns Ind. St. Code Edition, const. p. 68.) Art. 1, and 18 Reformation as a basis of penal code. - provides "The penal code shall be founded on principles of reformation, and not of vindictive justice" Burns, supra, p. 69. The Supreme Court of Indiana held in Baldwin v. State (1890), 126 Ind. 24, 25 N.E. 820 persons charged with criminal contempt are entitled to bail. Burns Code Edition, § 34-4-7-7 (3-906) provides for the procedure required in convicting a person of direct contempt. The contemnor is given the right to appeal if the fine is more than $50.00 or he is sentenced to imprisonment. Burns, Vol. 34 § 34-4-7-9 (3-909) covers indirect contempt and expressly grants a right of appeal from a conviction. Punishment for both direct and indirect contempt is fixed by statute. Burns Code Ed., Vol. 34, § 34-4-7-6 (3-906) authorizes punishment by fine or imprisonment or both with a $500.00 limitation on the fine and three (3) months maximum imprisonment.

(20) The Indiana State Constitution guarantees the right of appeal in all cases. Warren v. Indiana Telephone Co., 217 Ind. 93, 26 N.E.2d 399. A convicted defendant may appeal in a criminal case regardless of the chance for reversal. State ex rel. White v. Hilgemann, 218 Ind. 572, 34 N.E.2d 129. State v. Spencer, 219

Ind. 148, 41 N.E.2d 601. The equal protection clause of the XIVth Amendment is violated by suppressing an appeal. In Re Cochran v. Kauses, et al., 316 U.S. 255, 62 S.Ct. 1068, 86 L. Ed. 1453.

(21) Notwithstanding what he believed (and believes) to be a void and invalid disbarment order, as soon as he was able to set up an office following his release from the hospital, he filed a motion to withdraw his appearance of record in every case in which he was the lawyer of record except land condemnation cases in the United States District Court in Hammond where he had a right and duty to protect his personal and family's rights, 28 U.S.C. § 1654. In January, February, and March of 1979, letters were sent by certified mail, return receipt requested, advising every client that appellant was unable to continue to represent them because of the disciplinary action taken against him. The procedures outlined in A & D Rule 23, § 26, West's Ann. Ind. Code. Title 34, p. 879, were followed to the letter.

(22) On April 14, 1980, the date Judge Phil M. McNagny, Jr., ruled in the case of E. D. Crumpacker, et al., v. Owen Windle Crumpacker, Mary Eleanor N. Crumpacker, et al., United States District Court Hammond Division, Civil No. 75 H 212, that appellant was still a lawyer in good standing in the federal court and could continue as such through the conclusion of the proceedings. This case, and companion cases growing out of it, are still being actively prosecuted in the United States District Court and the Court of Appeals for the Seventh Circuit. Norma Kobus, the Disciplinary Commission's witness, (appellant's secretary up until November 4, 1980) testified that 99% of appellant's activities were devoted to the Edgar D. Crumpacker case, Cause No. 75 H 212, and appellant's federal civil rights cases. In no instance did appellant either appear in court or represent to anyone that he had not been disbarred. He has resisted, and will resist, any

efforts to prevent him from pursuing his legal remedies as authorized by the federal consitution and statutes. The defendants in the Federal Civil Rights and Organized Crime Control Act cases, including Sheldon A. Breskow of the Disciplinary Commission, procured the filing of the contempt proceeding after they were sued on August 12, 1980, in the case of Owen W. Crumpacker v. William French Smith, Attorney General of the United States, et al., U.S.D.C., Hammond Division, Civil No. 80 H 451; now pending in the Court of Appeal for the 7th Circuit.

(23) The Supreme Court of Indiana, for the first time in any recorded decision, has organized itself into a trial court to charge, try, and convict appellant, a private citizen, of the the statutory crimes of both direct and indirect criminal contempt. Burns Ind. Codes St., Title 34, 34-4-7-3 (3-903) Indirect and 34-4-7-1 (3-901) Direct. The Supreme Court of Indiana made its own ruling that its decision was not subject to review by the Supreme Court of the United States. Appellant's Notice of Appeal was filed February 5, 1982, nine (9) days after the findings of guilty and sentencing took place in chambers. The Supreme Court of Indiana has knowingly interferred with and prevented the appellant from prosecuting his personal lawsuits, his Federal Civil Rights Act and Organized Crime Control Act Cases and has prevented him from campaigning for or holding public office.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The abuse of contempt powers by courts has always been of grave concern to the American people. Cooke v. United States 267 U.S. 517, 539, 45 S.Ct. 390, 395, 69 L.Ed. 767. As aptly put in the case of State v. Shumaker, (1928) 200 Ind. 623, at page 643 quotem from a Georgia decision:

> "The power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith, and the moral influence of the courts is gone and the respect for law is destroyed Other department of the government may outlive unjust criticism and may still render service to its people, even when unfairly assailed, but when confidence in the courts is gone, respect for the law itself will speedily disappear, and society will become the prey of fraud, violence, and crime."

(State v. Shumaker (1928) 200 Ind. 623, 164 N.E. 408, was relied upon by Chief Justice Givan in his letter of March 4, 1982, to Paul Jenner, Administrator, Indiana State Farm:

> "Mr. Crumpacker has been convicted of neither a felony nor a misdemeanor but has been found guilty of contempt of court. Thus, he does not come under either the good time statute or the pardon provisions in the Indiana constitution. . . He is, therefore, to be incarcerated for the full ninety days stated in the commitment unless otherwise ordered by this Court.")

Speaking of criminal contempts of court, Justice Holmes for the United States Supreme Court in Gompers v. United States, (1914) 233 U.S. 604, 34 S.Ct. 693, 58 L.Ed. 1115 said:

> "These contempts are infractions of the law visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristics of crimes as that word has been understood in English speech."

Criminal contempt proceedings in Indiana have always been governed by criminal procedure. Whittem v. State, (1871) 36 Ind. 196; Wilson v. State (1877), 57 Ind. 71. In the Whittem case the court said:

> A proceeding for contempt is in the nature of a criminal prosecution. The results and consequences are the same in the one proceeding as in the other. In both the party convicted may be deprived of his liberty and confined in jail and subjected to the payment of a fine,

and in the Wilson case said: This being a proceeding to punish the appellant for a constructive contempt and being in the nature of a criminal proceeding . . . an affidavit ought to have been filed against the appellant before the attachment was issued.

This Court stated in the case of In Re Oliver (1948) 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682:

"It is the law of the land that no man's life, liberty or property be forfeited as a punishment until there has been a charge made and fairly tried in a public tribunal. See Chambes v. Florida, 309 U.S. 227, 236, 60 S.Ct. 472, 477, 84 L.Ed. 716. The petitioner was convicted without that kind of trial."

This appeal is of far reaching importance. Here, the Supreme Court of Indiana was expressly deprived of jurisdiction to exercise original jurisdiction in any action involving a private citizen by amendment to the Indiana constitution adopted on November 5, 1970. (See Burns, Code Ed., Const. Art. 7, 84., page ___, supra).

Appellant's status as an attorney in Indiana was terminated by virtue of the disciplinary action taken against him in the provision of the disciplinary action filed in the clerk's office at Indianapolis on November 29, 1978. The power to discipline appellant, as an attorney, was terminated when the Supreme Court of Indiana consented to the filing of the document designated as a per curiam disciplinary action.

The Supreme Court of Indiana in the case of State Ex Rel. Indianapolis Bar Association v. Fletcher Trust Company, (1937) 211 Ind. 27, 5 N.E.2d 538, was asked to punish bank lawyers who had not been admitted to the bar for contempt of court in an original action instituted by the Indianapolis Bar Association. The court unanimously held that it had no jurisdiction to entertain contempt proceedings against persons who were not members of the bar of the Supreme Court:

"This court has no jurisdiction over one who is not a member of the Bar and who is practicing law to punish him for contempt, except for some act which affects or interferes with the functioning of this court, for the reason that there are specific provisions of the Statute of Indiana for this purpose. Sections 4-3601, 4-3602 Burns 1933, §§844, 845 Baldwin's 1934. When the law provides a specific remedy to accomplish a certain purpose, that remedy must be pursued.

"Section 4-3601 (§844 Baldwin's 1934), supra, provides that it is unlawful for anyone to practice law without being admitted to the Bar and section 4-3602 (§845 Baldwin's 1934), supra, provides a penalty for the violation of the law. When one is charged under these sections with the illegal practice of the law he has the right to stand trial either before the court or a jury. He has the right to be heard and introduce evidence, and if convicted, he has the right to an appeal to this court. It is not a summary trial as in a contempt proceeding. If this court can assume jurisdiction to try those who are illegally practicing law on contempt charges then it can take away all the rights of the accused as provided in Article 1, Section 13, of the Constitution of Indiana, which provides:

> 'In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.'"

The Legislative Enactment Under Which The Supreme Court Of Indiana Sought to Exercise Jurisdiction To Indict, Try, And Convict Appellant Of Crimes, To-Wit Burns I.C. 33-2-1-4, Is Repugnant To Amendments IV, V, VI, VIII And XIV Of The United States Constitution.

Burns I.C. §33-2-1-4 has been on the statute books since 1952. The criminal contempt act of 1879 was expressly made inapplicable to the Supreme Court:

"34-4-7-10 (3-910). Application of statute.--The provisions of this act (34-4-7-1--34-4-7-10) shall apply to all proceedings for contempt in all courts of record in this state except the Supreme Court thereof: Provided, however, That nothing herein contained shall be construed or held to embrace, limit or control any proceeding against any officer or party for contempt for the enforcement of civil rights and remedies: etc."

After the decision in State ex rel. Indianapolis Bar Association v. Fletcher Trust Co., supra, the citizens of Indiana through amendment of the state constitution, withdrew all original jurisdiction from the Supreme Court except in matters concerning the admission and disciplining of members of the bar and injunctive proceedings with reference to the alleged illegal practice of law. Burns Ind. Stat. Ann. Code Ed., Const., p. 209, Art. 7, Section 7. In prosecuting a member of the bar of the Supreme Court, to-wit one Biagio J. Perrello for soliciting business in express violation of an injunctive order of the Supreme Court, the court speaking through Judge Hunter stated:

> "IC 1971, 33-2-1-4 (Ind. Ann. Stat. §4-110 (1968 Repl.)) gives the Supreme Court of Indiana 'full power...to punish by fine and imprisonment for contempt of its authority and process...' In addition, the power to punish for contempt is inherent in all courts of superior jurisdiction in Indiana. LaGrange v. State (1958), 238 Ind. 689, 153 N.E. 2d 593. A criminal contempt can be any act which manifests a disrespect for and defiance of a court. The willful disobedience of a court order can constitute indirect criminal contempt. Denny v. State (1932), 203 Ind. 682, 182 N.E. 313. However, the act must be done willfully and with intent to show disrespect or defiance. State ex rel. Indpls. Bar Assn. v. Fletcher Trust Co., supra. In the Matter of Biagio J. Perrello (1973) 260 Ind. 26, 291 N.E. 2d 698."

It has been held by unanimous authority that a court, be it an inferior court or a supreme court, does not have inherent or common law jurisdiction to prosecute an individual for an undefined crime of indirect criminal contempt. The Supreme Court of Indiana, therefore, undertook to hang its hat on Burns I.C. 34-4-7-10 (3-910) in sending appellant to prison for ninety (90) days:

> "It is not surprising that Respondent fails to cite any authority for his contention that IC 33-2-1-4 is unconstitutional. There is none. There is no doubt this Court possesses inherent and statutory power to punish by fine and imprisonment for contempt of its authority and powers." Contempt proceedings, Appendix, p. 5-c infra.

In trying and convicting appellant under the broad authority allegedly vested in the court by this statute, appellant was denied all of the constitutional safeguards including the right to a speedy trial in the city and county of his residence, Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed. 2d 1, a jury trial, Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491, the right to assistance of counsel, Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 and Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530. Because the statute does not incorporate in its terms the provisions guaranteeing appellant his constitutional rights, it is void as repugnant to the provisions of the United States Constitution.

The Disciplinary Action Of November 29, 1978, Being Void For Lack Of Notice And Hearing (Among Other Things); The Proceedings Instituted To Enforce The Order Are Likewise Void.

As pointed out under the statement of facts supra, the disciplinary action of November 29, 1978, was filed without notice or hearing and in abject violation of the double jeopardy provisions of the V Amendment. The Supreme Court neither read nor had access to the Record when it permitted the 27-page disciplinary action to be filed.

When the Supreme Court, through its disciplinary commission, permitted the disciplinary action of November 29, 1978, to be received in evidence as the Commission's exhibit number 1, for the alleged purpose of establishing the predicate upon which to send appellant to prison, it opened up the constitutional restrictions establishing the void character of the disciplinary action.

This Court has consistently held that a citizen could not lose his right to continue in his profession in the absence of findings of fact developed through adversary proceedings according to the accepted norms of due process:

"Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." Wisconsin v. Constantineau, 400 U.S. 433, 27 L. Ed. 2d 515, 91 S. Ct. 507 (1971).

* * * * * * *

"The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardship of a criminal conviction, is a principle basic in our society." Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168, 95 L.Ed. 2d 817, 71 S. Ct. 624.

* * * * * * *

"We have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the state seeks to remove or significantly alter that protected status." Paul v. Edward Charles Davis III, 424 U.S. 693, 711, 47 L. Ed. 2d 405, 96 S. Ct. 1155, 1165.

See, Bell v. Benson (1971), 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586; Morrissey v. Brewer (1972), 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593; Green v. McElroy (1959(, 360 U.S. 474, 496 3 L. Ed. 2d 1377, 79 S. Ct. 1400. Many of the twenty (20) Counts charged appellant with the commission of criminal acts (Counts I and II, for example):

"A society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." In Re Winship, 397 U.S. 385, 393-394.

See also, Powell vs. Alabama (1932) 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 ALR 527; Selling, et al. vs. Radford (1916) 242 U.S. 246; and In Re Oliver (1948) 333 U.S. 257, 68 S.Ct. 499, 92 L. Ed. 682.

It has been universally held that if an order or judgment is void for want of jurisdiction (as pointed out with reference to the November 29, 1978, disciplinary action in the motion to dismiss, affirmative answers and briefs), all efforts to enforce the order through contempt proceedings, either civil or criminal, are likewise void. United States ex rel. Thomas v. Keokuk (1868), 6 Wall. 518, 18 L. Ed. 918; Ex Parte Towland (1882), 104 U.S. 604,

26 L. Ed. 861; Ex Parte Fisk (1884), 113 U.S. 713, 28 L. Ed. 1117, 5 S. Ct. 724; Re Ayers (1887), 123 U.S. 443, 31 L. Ed. 216, 8 S. Ct. 164; Re Sawyer (1888), 124 U.S. 200, 31 L. Ed. 402, 8 S. Ct. 482; Ex Parte Buskirk (C.C.A. 4th 1896), 72 F. 14; Ex Parte Robinson (9th Cir. 1906), 144 F. 835; Louis v. Peck (7th Cir. 1907), 154 F. 273, cert. den. 207 U.S. 593, 52 L. Ed. 355, 28 S. Ct. 258.

On its face, the statute does not authorize the Supreme Court to organize itself into a general court martial, file, prosecute and judge its own charges without doing violence to our constitutional liberties. In Re Murchison, 349 U.S. 133, 75 S. Ct. 625, 99 L. Ed. 942: "Fair trials are too important a part of our free society to let prosecution judges be trial judges of the charges they prefer." In Mayberry v. Pennsylvania, 400 U.S. 45, 91 S. Ct. 499, 27 L. Ed. 2d 572, Judge Douglas speaking for the Court said "whether the trial be federal or state, its concern of due process is with the fair administration of justice."

Appellant was denied his right to be represented by counsel, his right to have compulsory process, his right to discovery, and his right to prepare for trial. Because the Supreme Court did not complete its case on Monday, June 29, 1981, appellant was able to prepare and file answers in the nature of general denial, etc. and to subpoena witnesses. All of the Commission's motions to quash subpoenas duces tecum caused to be issued and served by appellant were quashed. His motion for the production of documents presented on July 2, 1981, resulted in a $500 fine and ninety days in prison for alleged direct criminal contempt of court.

The refusal on the part of the Court to permit oral argument on the findings, before the decision was a patent violation of appellant's sixth amendment rights in view of the size of the Record. Herring v. New York, 422 U.S. 852, 95 S. Ct. 2550 (1975).

The order of disbarment contained in the 29-page disciplinary action is vague and indefinite. The allegations in the verified

information for contempt do not comply with the requirements of the sixth amendment of the Constitution. In speaking of similar charges, the Supreme Court of Indiana in the case of State ex rel. Indianapolis Bar Association v. Fletcher Trust Company, supra, stated:

> "The respondent not only filed a verified response denying the charges contained in the information and that there was no intention to defy the authority of this court, but it also set out in its response the acts which it actually performed in its course of business. Whether any of the acts done by the respondent can be said to be 'practicing law' is debatable and the courts of the country are at variance upon the subject. It can at least be said there is room for two constructions, so that the intent of the party becomes the material question of inquiry, and a denial on oath by such party of intent to violate any rule or order of the court is conclusive. The great weight of authority holds that in cases of constructive or direct criminal contempt, if the contempt consists of acts or statements which are capable of two constructions, one of which would amount to contempt and the other not, then the intent becomes the material question and if the contemnor denies under oath that he did not intend to violate an order or rule of court he is entitled to be discharged."

It appears on the face of the ten (10) page document captioned "Contempt Proceedings" filed internally on January 27, 1982, that appellant's conviction of the crime of "Direct Criminal Contempt" is inviolation of the Vith Amendment, and, therefore, appellant was illegally confined. The alleged "Direct Contempt" occurred on July 2, 1981. The conviction was entered on January27, 1982, (see, ten (10) page "Contempt Proceedings", appendix 5c, infra). This is palpably wrong. Cooke v. United States (1925), 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767; Anderson V. Dunn, 6 Wheat 204; In Re Michael, 326 U.S. 224, 66 S. Ct. 78, 79; Mayberry v. Pennsylvania (1971) 400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 532; In Re Dellinger (7th Cir. 1972), 461 F. 2d 389; Offutt v. United States, 348 U.S. 11, 75 S. Ct. 11, 99 L. Ed. 11; United States v. Meyer (1972), 149 U.S. App. D.C. 212, 462 F. 2d 827; In Re McConnell (1962), 370 U.S. 230, 234, 82 S. Ct. 1288, 1291.

Lastly, under the sixth amendment to the United States Constitution, appellant had a right to a public trial. This means that he was entitled to be physically present at every critical stage of the proceeding. The determination of guilt and the sentencing are the most critical stages of a criminal trial. A conviction of a crime in the absence of the defendant, and without any notice being given, is void because the court, in so acting, deprives the defendant of his constitutional rights. Tahash v. Clements, 234 Ind. 197, 125 N.E. 2d 439; Dean v. State, 234 Ind. 568, 130 N.E. 2d 126.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

Owen W. Crumpacker

Owen W. Crumpacker
6255 Hohman Avenue
Hammond, IN 46324

Pro Se

July 11, 1982

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN RE: THE MATTER	)	
	)	
OF OWEN W. CRUMPACKER,	)	
	)	974-S-187
An Attorney.	)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS OF HEARING OFFICER

The Indiana Supreme Court Disciplinary Commission filed its Amended Complaint For Disciplinary Action against Owen W. Crumpacker, hereinafter referred to as Respondent, on June 25, 1975. The undersigned was appointed Hearing Officer, qualified and assumed jurisdiction. The Amended Complaint contained 19 Counts. Evidentiary hearing commenced September 29, 1975, and concluded on December 3, 1975. Additional documentary evidence was received up and until the 3rd of February, 1976. Approximately 31 days were taken up with the evidentiary hearing. Documentary evidence offered and admitted was voluminous. The Disciplinary Commission was represented by Attorneys David B . Hughes and Craig Stevens. Respondent appeared pro se, by counsel Richard A. Miller, and during Respondent's case in chief, by additional counsel John M. Lyons.

As required by law, the Hearing Officer will make findings of material fact, conclusions of law and recommendations. However, before attempting this task, a few preliminary comments and findings are necessary.

Respondent has practiced law in northern Indiana for over 30 years and until January of 1973, headed the law firm of Crumpacker, Abrahamson and Reed in Hammond, Indiana. The partnership dissolved January 1, 1973; said termination was stormy.

Many of the charges against Respondent can be directly traced to the unsatisfactory partnership termination. There were disputes, and I believe some honest ones, concerning accounts, clients, and pending litigation. These disputes have never been resolved through court action; and the Hearing Officer could not resolve them here.

It was evident from the start that this proceeding wasn't the typical disbarment hearing. For this reason, the Hearing Officer's attitude on the introduction of evidence was liberal. Respondent strongly resented the hearing, which fact made it difficult for all. He honestly believes that many attorneys and Judges are out to crucify him. He further believes that he is one of the few remaining honest attorneys in Lake County, Indiana. Similar to Don Quixote, he attacks the windmills: a crusader.

This case is decided on the merits of each Count. Before undertaking this, it is necessary to note

some legal questions which have some merit. Most of these, Respondent discusses in his brief: (A) Questions concerning the procedures in the investigative stages; (B) Respondent's conduct took place directly in other litigation which is still pending; (C) Partnership disputes have not been resolved; (D) Distinctions between disbarment proceedings and contempt proceedings, and the purposes for both. He believes the "wolf pack" is on the game; this belief has merit. However, his conduct contributed strongly to the situation.

FINDINGS

COUNTS I, II, and III:

These charges are connected with the litigation described as Dedelow, Inc. et al -vs- Board of Commissioners of Lake County, et al, Lake Superior Court, Cause No. 171-43, Room 1, Hammond. This litigation was under the Public Lawsuit Statute and was filed in 1971 by Kenneth Reed, law partner in the firm of Crumpacker, Abrahamson and Reed; Respondent was the senior partner of the firm. This basically was Mr. Reed's case and the action was signed by Mr. Reed and also signed in the law firm's name. When the law firm dissolved in January of 1973, the case was pending on appeal; Court of Appeals 871A162. At that time there was no agreement as to who was to proceed with the litigation, nor was there any account of moneys in the litigation. Unsuccessful attempts were made concerning these matters in early 1973 by the former partners and Attorney Fred Donnersberger; who was employed to represent Mr. Kenneth Reed and Mr. Harold Abrahamson in connection with the dissolved partnership. Respondent filed a motion for extension of time in which to file an answer brief in the Appellate Court; after which Mr. Reed did, in fact, file appellee's brief. There was a dispute in the Appellate Court as to who was representing the appellees and therefore, who was entitled to the transcript. Respondent's authority was not challenged by the appellants' attorneys. Various affidavits were filed in the Appellate Court concerning the representation of

appellees. The Appellate Court decided this question against the Respondent. The appellees in the lawsuit never specifically authorized Respondent to represent them on appeal. Because time was of the essence, it was Respondent's position he must make every effort to perfect the appeal; he did not wish any clients to suffer because of the partnership disputes. After the Court of Appeals decision, Respondent made no further attempts to represent appellees.

The Hearing Officer finds for Respondent on Counts I and II. There was no intentional violation of DR1-102A (1), (4), (5) and (6).

Count III concerns disclosures of "confidences and secrets" of one Richard Klaas. These were supposedly disclosed in Respondent's motion filed before the Court of Appeals. Although the evidence is conflicting, the greater weight of it shows that Respondent received no confidential information from Richard Klaas. Respondent did, in fact, believe the motion which he filed in the Appellate Court. He was attempting to disclose an alleged fraud as a judicial officer. This Count is closely connected with the partnership termination.

The Hearing Officer finds for Respondent; there is no intentional violation of DR1-102A.

COUNT IV A:

Prior to the termination of the law firm, a Probate estate was opened for Robert C. Croner by Kenneth Reed. When the firm dissolved, there was a dispute

concerning this estate. These disputes have not been resolved by the Probate Court; nor have they been resolved in a lawsuit concerning the dissolution of the partnership. The Administratrix did make a demand upon Respondent for the Croner estate file. Respondent refused this demand until there was an accounting by his former partners. The Administratrix did not demand any particular papers in the file.

The Administratrix was not entitled to the entire file; she does not own it. Respondent's conduct did not violate DR1-102A (1), (5) and (6), nor DR9-102B (3) and (4). This dispute should be decided by the Court which has jurisdiction of the estate.

COUNT IV B:

In 1968, a condemnation lawsuit was filed entitled State of Indiana -vs- Abe Kushner, et al, 68-PSC-657 in Porter County, Indiana. Respondent's firm represented the landowners; a written agreement concerning the employment was entered into on August 27, 1968. Respondent did the work in this lawsuit and, by agreement with his clients, the firm received $70,000 after the appraisers award was paid into court. The suit was eventually venued to LaPorte Circuit Court. In the spring of 1974, Respondent and his clients had a disagreement after which the clients demanded the firm's files and the prepaid contingent fee of $70,000. Respondent refused this demand. Subsequently, in March of 1975, this dispute came before the LaPorte Circuit Court, which ordered the

Respondent to turn over certain papers and make an accounting. The condemnation lawsuit has never been tried and an appeal is pending concerning the LaPorte Circuit Court's turn over and accounting order.

Based on these findings, the Hearing Officer finds that Respondent did not violate DR1-102A (1), (5) and (6); DR2-110B (4); DR2-110A (3), nor DR9-102B (3) and (4). The evidence shows an honest, good faith dispute between Respondent and these clients in that particular lawsuit.

COUNT V:

In July of 1975, Respondent filed an action in the Lake Superior Court, Room 5, Hammond, Cause No. 573-448. The suit was to set aside a fraudulent judgment. It was a class action against approximately 40 defendants, including one Richard Klaas. Respondent never personally represented Mr. Klaas. This case is presently pending on appeal, Court of Appeals Cause No. 3174A15. The theory of the lawsuit is fraud, past and continuing.

Respondent believed the allegations of his complaint. The Hearing Officer is unable to ascertain if his belief was reasonable under the circumstances. This question should not be decided here. In filing the lawsuit Respondent did not violate DR1-102A (1), (5) and (6), or DR5-105A.

COUNT VI:

In 1973, Respondent was searching for a Lake County taxpayer to intervene in a lawsuit. On March 14,

1973, he wrote to Mr. Russell Hopper in furtherance of this purpose. A telephone conversation followed and Mr. Hopper declined the invitation. The two were acquaintances. Mr. Hooper may have participated as a taxpayers' representative for Respondent in the past; the evidence is conflicting on this point. Mr, Hopper did not file a complaint with the Disciplinary Commission or testify at this hearing.

Hearing Officer finds that Respondent's conduct did not violate DR1-102A (1) and (6), nor DR2-103A.

COUNT VII:

A physical confrontation occurred between Respondent and Attorney William Spangler on May 6, 1971. Attorneys and clients were meeting for the purpose of settling some lengthy litigation; this did not take place in court. After some yelling, Respondent took a swing at Mr. Spangler; no blow struck home. Respondent did not intend to hurt anyone. Charges were not filed resulting from this incident; either criminal, civil or contempt.

Respondent's conduct did not violate DR1-102A (1) and (6).

COUNT VIII:

This involves some uncomplimentary remarks directed by Respondent towards Attorney J. Edward McHie in early 1970. This happened during a deposition. Respondent apologized following the incident and the apology was accepted by Mr. McHie.

Hearing Officer finds that Respondent did not violate DR1-102A (5) and (6).

COUNT IX:

On March 21, 1974, there was a verbal exchange between Respondent and Attorney Richard W. Johnston. This took place in the Lake Superior Court, Room No. 1, Hammond, Indiana, The Honorable Cordell C. Pinkerton presiding. Judge Pinkerton did not testify, nor did the other party present, Attorney Richard W. Johnston. No contempt proceedings resulted from the incident. There was not a delay or disruption of the court proceedings. Respondent's remarks, which were improper, were reasonably related to the judicial action, in furtherance of his position as an attorney for and on behalf of his clients.

Respondent's conduct did not violate DR1-102A (1), (5) and (6), nor did it violate DR7-106C (6).

COUNT X:

In early 1972, Respondent participated in the taking of a deposition which was often continued and was lengthy. The participants temperament became short near the conclusion. Respondent directed some uncomplimentary remarks towards Attorneys John P. McQuillan and Wilbur J. Glendening. The deposition did, however, proceed in an orderly course to a conclusion. The participants did not file a complaint with the Disciplinary Commission. The circumstances surrounding the incident are not clear.

Respondent's conduct did not violate DR1-102A (5) and (6).

COUNT XI:

Respondent was the attorney for litigants in Lake Circuit Court, Cause No. C71-1384. This was a taxpayers' lawsuit concerning fraud and the case drew much publicity. In June of 1974, Respondent filed a brief in the case and disseminated copies of it to various Judges and attorneys not involved in the lawsuit. The people who received it did not testify, nor make a complaint to the Disciplinary Commission. Local newspapers had previously published other orders about the case. The purpose of Respondent's actions was to gather support for his clients' lawsuit. His conduct was not prejudicial to the orderly administration of justice, nor did it constitute the making of a prohibited extra judicial statement concerning litigation.

At worst, Respondent exercised poor judgment; he did not violate DR1-102A (1), (5) and (6), or DR7-107G (1), (2) and (5).

COUNT XII:

On July 1, 1974, Respondent wrote a letter to Judge James Moody, Lake Superior Court, Room No. 4. The letter was critical of Judge Moody's handling of a particular case; specifically, a previous order he entered which was sent to the Disciplinary Commission. A copy of Respondent's letter also went to the Disciplinary Commission. The Hearing Officer is unable to determine why Judge Moody's order went to the Commission. Respondent's letter went there following the order for the purpose

of defending his position; for the same reason, copies went to the news media who had published the order two days after it was executed; someone unknown furnishing it to them. It is evident that the press and public had basically been presented one side of the case shortly before the letter. It is also clear that Respondent, acting for his clients, desired to publish his position. Respondent believed the statements in the letter were true; the reasonableness of such belief is questionable.

Respondent did not violate DR1-102A (1), (5) and (6), nor did he violate DR8-102B.

COUNT XIII:

On August 8, 1974, Respondent wrote to Judge Moody; copies were sent to various other persons. The letter shows the continuing conflict between the two concerning pending litigation. Respondent did not knowingly make false statements in the letter. Again, his intention was to publish his clients' position. Respondent's theory is based on a conspiracy; the evidence supporting this is conflicting. Neither Judge Moody, nor Respondent's adversaries initiated contempt proceedings which would have offered Respondent an opportunity to explain his conduct.

Respondent did not violate DR1-102A (16), nor DR8-102B.

COUNT XIV:

It is alleged that Respondent made improper final oral argument in the case of State of Indiana -vs-

John Gallison, N 3013, City Court of Hammond, on May 22, 1973. This was a jury case and concerned blocking a railroad crossing in the City of Hammond. In his argument, Respondent went beyond the scope of the evidence; for this he was admonished by the Court. Respondent and his client did believe the prosecutions against the railroad were politically motivated by the City.

Respondent's conduct did not violate the Disciplinary Rules, specifically DR1-102A (1), (5) and (6), nor DR7-106C (1) and (6).

COUNT XV:

Respondent filed a lawsuit on or about May 3, 1974, entitled Woodmar Realty Company -vs- Samuel C. Ennis and Company, et al, LakeSuperior Court, Room No. 5, Cause No. 174-439. The 31 page complaint concerned numerous matters, facets and phases of the Woodmar litigation in Federal and State Courts going back to 1941; this suit is pending at this time. Respondent did, in fact, have authority to file this lawsuit. The contention of the Disciplinary Commission is that the suit was filed for the purpose of annoying and harassing attorneys and party litigants who, in the past, have in one way or another opposed Respondent; the evidence was not sufficient to support their contention. A suit was filed in Federal Court to enjoin the prosecution of the 1974 lawsuit; however, the suit to enjoin it was dismissed and an appeal is pending before the Court of Appeals for the Seventh Circuit. These tribunals have before them the parties in interest

with jurisdiction to make necessary determinations.

Respondent's conduct in filing said lawsuit did not violate DR1-102A (1), (5) and (6), nor did it violate DR7-102A (1).

COUNT XVI and XVII:

Respondent was an attorney in DuBios -vs- Union Trust Company of Indianapolis as Trustee, et al, Cause No. 197-60. After pending for 17 years, the case was set for trial on October 12, 1973. On that date, Respondent filed a motion for substituting certain parties and requested a continuance; both requests were granted by the Honorable Everett West. Judge West and Attorney Fred Donnersberger were not pleased with Respondent's motion. After granting the motion, Judge West imposed sanctions on Respondent; heated argument and accusations followed his decision. Both Respondent and Attorney Donnersberger lost their tempers. No contempt proceedings were initiated against Respondent.

Respondent's actions were not prejudicial to the administration of justice; nor did they cause unnecessary delay in the prosecution of the case. Respondent's conduct did not violate DR1-102A (1), (5) and (6), or DR7-102A (1), or DR7-106C (6).

COUNT XVIII:

The lawfirm of Crumpacker, Abrahamson and Reed received a $7,500 loan from the Mercantile National Bank of Hammond on March 6, 1970. This transaction was

initiated by Respondent and was later renewed by other members of the law firm. The loan was for the purposes of out-of-pocket expenses connected with pending litigation which is still pending. After the law firm dissolved, Respondent personally paid the renewal note; this loan is still the subject of a partnership dispute. These moneys were not the clients' funds or property, nor were they aware of the transaction.

Respondent's conduct did not violate DR1-102A (4).

COUNT XIX:

In 1971 the law firm represented Morris Victor in Victor -vs- Sylvester, et al, Porter Superior Court Cause No. 70-PSC-300. Attorney Harold Abrahamson did the work for Mr. Victor. A settlement was reached under which Mr. Victor was to receive $1,750 from each of two defendants. After one defendant paid his share, Mr. Victor consented that distribution be withheld until the firm received the entire settlement. The other half has never been paid by the defendant. After the partnership dissolution, Mr. Victor requested that Respondent release his file and money. Respondent wished to discuss it; however, Mr. Victor refused this request. Respondent does not believe that he owes Mr. Victor; however, clearly somebody owes him. The Hearing Officer cannot decide this partnership dispute.

Respondent did not violate DR1-102A (1) and (6), nor did he violate DR9-102B (4).

In conclusion, the Hearing Officer has found for Owen W. Crumpacker, the Respondent. The evidence clearly shows that he can be a difficult man; one who has pushed and bullied Judges and attorneys for years. Yet, he has done so as an advocate and with honesty. Unfortunately, many times he is unreasonable and hasty. Surely all professions must deal with difficult personalities. If they are honest and capable, there should be a place in the profession for them.

Respectfully submitted,

Bruce W. Douglas, Hearing Officer

ATTORNEY FOR RESPONDENT

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John M. Lyons
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FOR THE INDIANA SUPREME COURT DISCIPLINARY COMMISSION

David B. Hughes
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IN THE

SUPREME COURT OF INDIANA

IN THE MATTER OF)
) Cause No. 974 S 187
OWEN W. CRUMPACKER)

DISCIPLINARY ACTION

PER CURIAM

This proceeding is before the Court on a nineteen count amended complaint filed by the Disciplinary Commission of the Indiana Supreme Court pursuant to Admission and Discipline Rule 23, Section 12. A Hearing Officer was appointed, the cause was heard, and the Hearing Officer has filed his findings of fact, conclusions of law and his recommendation. The Disciplinary Commission and the complainant have now petitioned, pursuant to Admission and Discipline Rule 23, Section 15(a), for this Court to review the findings of the Hearing Officer and the Respondent has submitted objections and supplemental objections to the petition for review. Both the Disciplinary Commission and the Respondent have filed briefs in this cause.

In the course of extensive proceedings which have already transpired in the cause and in their respective pleadings before this Court, the Disciplinary Commission and the Respondent have raised several issues which affect this cause in general. These general issues will be addressed prior to reviewing the allegations of misconduct and the evidence of record in support of such allegations.

In his objections and brief in support of such objections, the respondent incorporates by reference three defenses to the allegations of misconduct raised during the hearing stage of this cause. As his first affirmative defense, Respondent asserts that Admission and Discipline Rule 23 is unconstitutional in

that it violates the 1(and 14th Amendments to the Un ed States Constitution and Article 1, Sections 13 and 21 of the Indiana Constitution. At no point in these proceedings, however, does the Respondent set out the specifics of this objection. Instead, the Respondent merely makes the general objection and then in the course of his pleadings attempts to attach such objection to specific assertions of misconduct. At a later point in this opinion this Court will address the specific objections directed toward the charges. Thus, this Court now finds that the Respondent's first affirmative defense, as it stands without specificity, does not present an issue for determination by this Court.

As his second affirmative defense, the Respondent asserts that all the counts of the verified complaint filed in this cause are and constitute the subject matter of pending litigation, the exclusive jurisdiction of which is vested in particular courts of the State.

The fact that the alleged violations of disciplinary rules involve conduct during the course of litigation is no defense. Issues of civil or criminal litigation are not determined in a disciplinary proceeding. Under the Constitution of the State of Indiana, this Court must establish and police standards of professional behavior by the bar. The standard for an attorney's behavior is the Code of Professional Responsibility and such standard exists independent of issues in civil or criminal litigation out of which an allegation of impropriety may develop. In re Wireman, (1977) _Ind._, 367 N.E.2d 1368, cert. denied 56 L.Ed.2d 402. Accordingly, in light of the above considerations, this Court now finds that the Respondent's second affirmative defense is unfounded.

The Respondent, as his third affirmative defense, asserts that a former Disciplinary Commission member had a personal, financial interest in the disbarment of the Respondent; and the Commission, acting through this former member and agents "conspired and confederated with other Lake County attorneys for the accomplishment of a corrupt, illegal and unconscionable plan, purpose and scheme," such plan being the removal of the Respondent as an opponent in certain litigation. In Volume II of his brief in support of his objections, the Respondent attempts to weave thirty years of litigation in which he has been involved, including these disciplinary proceedings, into one grand master plan of conspiracy involving judges, courts and attorneys. The whole world is a fraud, everyone is driven by corrupt motives, and the only exception to this evil design is the Respondent, Owen W. Crumpacker. Consequently, the Respondent

concludes that the whol world is now out to destroy Owe.. W. Crumpacker.

After examining all matters which have been submitted in this cause, including the transcript of the proceedings before the Hearing Officer, this Court now finds that the Respondent has totally failed in his proof in support of his third defense. The Respondent makes allegations and in the course of questioning witnesses attempts to tie his assertions to events. However, he never accomplishes his purpose; the factual allegations raised in this defense just are not supported by credible, admissible evidence. Accordingly, this Court now finds that the Respondent's third affirmative defense is without merit.

Additionally, the Respondent, in the pleadings filed in this cause, raises various objections to this disciplinary proceeding and the various counts contained in the verified complaint. The Respondent asserts that many of the charges were predicated on allegations not contained in a grievance filed pursuant to Admission and Discipline Rule 23 and as such were neither appropriately investigated nor considered by the Disciplinary Commission.

This Court has held that a disciplinary grievance will not be strictly construed. Such grievance must merely advise the Respondent of the general nature of the allegations of misconduct made against him. In re Wireman, Supra, In re Murray, (1977) _Ind._, 362 N.E.2d 128, appeal dismissed, _U.S._, 98 S.Ct. 758, 54 L.Ed.2d 777 (1978). In the present case, there were three separate complaints filed and the Respondent specifically waived notice at the administrative level as to several of the allegations of misconduct. We find that the Respondent was advised at the administrative level of these proceedings of the general nature of the allegations upon which the charges in the complaint are predicated.

The Respondent also argues that the events which transpired prior to the adoption of the Code of Professional Responsibility cannot constitute a basis for a disciplinary proceeding. The Respondent, however, does not further develop this issue. This Court, prior to the adoption of the present disciplinary rules, did impose discipline, and the standards for such conduct were the Cannons of Professional Ethics of the American Bar Association. In re Kurman, (1975) _Ind._, 335 N.E.2d 210, Tokash v. State, (1953) 232 Ind. 668, 115 N.E.2d 745. Accordingly, where it is properly charged, this Court will examine events which allegedly transpired prior to the effective date of the Code.

Next, the Respondent objects to various charges in the verified complaint arguing that these matters allege criminal misconduct which should afford him the protection of a criminal defendant; he further asserts that the death of a witness has denied him his rights of confrontation and the accusations which center on direct or indirect contempt really are matters to be resolved through civil or criminal proceedings.

These objections merely parallel Respondent's second affirmative defense which was previously noted and determined to be unfounded. We again note that a disciplinary proceeding stands independent of any criminal or civil proceeding. A disciplinary proceeding cannot alter a valid judgment and the fact that a civil or criminal cause was or was not commenced against the Respondent has no bearing on the propriety of a particular disciplinary proceeding relating to similar factual matters. Accordingly, we find that Respondent's objections as set out above are without merit.

The remaining portion of the petitions for review filed by the Disciplinary Commission and the complainant, and the objections and supplemental objections filed by the Respondent concern the substantiation of alleged acts of misconduct and the factual and legal conclusions to be drawn from the factual findings. These issues are resolved through the review process employed by this Court in disciplinary matters. Ultimate findings of fact upon which a determination of misconduct is weighed are reached through a complete examination of all pleadings, including the transcript. The findings of the Hearing Officer are considered; however, they are not controlling on this Court. In re Wireman, Supra, In re Murray, Supra, In re Pawlowski, (1959) 240 Ind. 412, 165 N.E.2d 535.

In the present case, the Respondent, through the customary courtesies extended attorneys of record, obtained the exhibits considered during the hearing stage of this cause. Ostensibly, such exhibits were obtained to allow the Respondent an opportunity to prepare his response to the petitions for review submitted by the Disciplinary Commission and the complainant. Although stating that he would do so and although being requested to do so on several occasions, the Respondent has failed to return the exhibits placed in his custody and care. The Disciplinary Commission, in their brief, has summarized the relevant exhibits and the Respondent has not specifically objected to such summaries. Accordingly, this Court has employed the summaries submitted by the Disciplinary Commission and taken judicial notice of the records of this Court

in its review of the H ing Officer's findings of fact.

Counts I, II, III, V, VI, XI, XII, and XIII are all interrelated and generally deal with the Respondent's litigious assault on former members of his law firm, former clients, and others perceived by the Respondent to be associated with his former partners. It is noted at the outset that many of these charges involve conduct which occurred during the course of litigation. The Code of Professional Responsibility does not restrict advocacy and this Court does not suggest in any way that a lawyer should not provide zealous representation. Yet, a legal proceeding is not a vehicle for personal vilification and when a lawyer's decisions, pleadings, and practice develop into tools for self-interest, he ceases to be a zealous advocate. The lawyer at this stage becomes an impediment to the practice of law and violates the Code of Professional Responsibility.

The first two counts emanate from the Respondent's alleged conduct during the appeal of a cause from Lake County, captioned Dedelow Inc. et al., v. Board of County Commissioners et al. In general the Respondent is charged with improperly asserting that he represented the appellees and improperly submitting a scurrilous pleading. Specifically, the Respondent is charged under both counts with violating a disciplinary rule, with engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, with engaging in conduct prejudicial to the administration of justice, and with engaging in conduct that reflects adversely on his fitness to practice law, in violation of Disciplinary Rules 1-102(A)(1), (4), (5), and (6).

After reviewing all matters submitted in this cause, the Court now finds that in the spring of 1972 the Respondent was a partner in the firm of Crumpacker, Abrahamson and Reed. In May 1972, Abrahamson and Reed announced their intent to leave the firm. By the end of 1972, the plans were finalized by Abrahamson and Reed and there was no question as to the fact that they were leaving. The Respondent left for a vacation in Colorado and locked his files in his office. As a condition to getting office files, the Respondent demanded that the clients of Reed come into the office and discuss, with the Respondent, Reed's representation in the future. The Respondent also demanded possession of Reed's personal bank accounts for scrutiny.

The Dedelow case was an action brought by Dedelow Inc. as the unsuccessful low bidder on a county project seeking injunctive relief plus damages. The case was filed in 1971 by Kenneth Reed. He signed the pleadings in the firm name and

in his own name. The Respondent never participated in the law suit. The trial court found for plaintiffs, imposed injunctive relief, but did not award damages. Defendants appealed.

The defendants filed their brief on December 31, 1972. Plaintiffs below (Dedelow) had forty days to respond which came about during a period of time in which the Respondent's firm was dissolving. Peter Vukovich, house counsel and secretary for Dedelow, Inc., gave the Respondent a check covering costs due and requested that the Dedelow files be turned over. He never received what he requested. James Dedelow, Vice-President of Dedelow, Inc., thought that he employed Reed and not the Crumpacker firm.

On January 29, 1973, the Respondent filed a verified petition for extension of time to file the brief for Dedelow and was given the record of proceedings. (The Respondent has asserted that he had authority to file the petition by reason of the fact that he was the senior partner in the law firm at the time the initial complaint was filed.) Thereafter, Reed filed for time and requested possession of the record. The Court of Appeals set a hearing on March 5, 1973, to determine who represented Appellee Dedelow.

Reed and Abrahamson employed counsel, Fred G. Donnersberger, to represent them concerning the dissolution with the Respondent. Prior to the Court of Appeals hearing, the Respondent prevailed on Donnersberger to get such hearing called off. When Donnersberger informed the Respondent that it would be held as scheduled, the Respondent retorted, "You snake son-of-a-bitch, that leaves but one thing for me to do, to go down and load up both barrels of my gun, and I'll getcha."

The Court of Appeals held the hearing and gave both parties claiming to represent appellee until March 12, 1973, to file papers on the issue of representation. At the March 5th hearing Donnersberger tendered the Court a copy of a resolution of Dedelow, Inc. showing that the Board of Directors unanimously voted to have Reed represent them in the litigation then pending before the Court of Appeals.

On March 11th, the Respondent filed in the Court of Appeals a motion entitled "Motion of Defendant-Appellee (sic) James R. Dedelow for Review on Records for Fraud Practiced upon the Courts and the Taxpayers of Lake County, Indiana." (This Court has taken judicial notice of such motion.) This pleading alleged that Reed had conspired with the county attorney to produce the "de facto" defeat of his clients in this matter in exchange for the defeat of the

county in other litigation, commonly known as the "Apple Valley Park" litigation. James Dedelow then filed a pro se pleading noting that he did not authorize the filing of the above-noted motion and prayed that it be withdrawn and expunged. The Court of Appeals granted the relief as prayed by James Dedelow.

In light of the above findings of fact this Court now concludes that the Respondent misrepresented to the Court of Appeals his status in the Dedelow proceedings and used such proceedings as a forum to personally attack a former partner. Accordingly, this Court now finds that the Respondent has violated the Disciplinary Rules, engaged in conduct involving dishonesty, deceit and misrepresentation, engaged in conduct prejudicial to the administration of justice and engaged in conduct which adversely reflects on his fitness to practice law. By such conduct the Respondent has violated the Code of Professional Responsibility as charged under Counts I and II of the amended verified complaint.

Counts III and V are related to Counts I and II and grow out of the Respondent's relationship with one Richard L. Klaas who was a client of the firm of Crumpacker, Abrahamson and Reed prior to the dissolution of this firm in January 1973. Under Count III, the Respondent is charged with using confidential information concerning Mr. Klaas in filing his "Motion of Defendant-Appellee (sic) James R. Dedelow for Review of Records for Fraud, etc.," on March 11, 1973, in the Court of Appeals. Specifically, under Count III, the Respondent is charged with revealing confidences or secrets, using confidences or secrets for the advantage of himself or a third party, violating a disciplinary rule and engaging in conduct which adversely reflects on his fitness to practice law in violation of Disciplinary Rules 4-101(B)(1), 4-101(B)(2), 1-101(A)(1), and 1-101(A)(6) of the Code of Professional Responsibility.

Under Count V of the complaint, the Respondent is charged with naming Klaas as one of 42 defendants in a lawsuit involving the same general subject matter as involved in prior litigation where Klaas was represented by the Crumpacker firm. The Respondent is charged with the same violations of the Code as noted above under Count III, plus improperly using a confidence or secret to the disadvantage of a client which violates Disciplinary Rule 4-101(B)(2).

After examining the matters which have been submitted in this cause, we now find that Richard L. Klaas became interested in developing a mobile home park but ran into difficulty when the County Commissioners denied a petition to have

property rezoned. He went to Crumpacker, Abrahamson & Reed in June 1971; he initially requested Mr. Crumpacker, but was referred to Mr. Reed. Since the vote of the Commissioners was 2-0, Reed proceeded to file a declaratory judgment action in Lake Superior Court Room 5. This action was decided in August 1971 and eventually Klaas received a favorable ruling concerning the rezoning.

The land in question was held in trust by Lake County Trust Company. After Klaas had plans approved by the Planning Commission, Saul Ruman, on behalf of certain affected property owners, brought a suit against Klaas and another suit against the Board of Commissioners in Lake Circuit Court. Klaas was represented by the Respondent's law firm in all of this litigation and paid the firm approximately $7,000. This money was deposited in the firm account. During the course of this litigation Klaas talked over his legal problems with Reed and Crumpacker and provided numerous documents and other materials necessary for the proceedings.

On March 11, 1973, the Respondent filed his motion in the Court of Appeals in the Dedelow case asserting fraud on behalf of Reed and Klaas. At this time two appeals were pending in the litigation brought by Ruman for the remonstrators. The Respondent asserted that Reed entered a deal with the attorneys representing the Lake County officials in this cause. Under the alleged terms of such arrangement, Reed was allowed to enter a false entry of judgment in the Apple Valley litigation in exchange for losing the Dedelow litigation. In his motion the Respondent sets out the proposed rent schedules for the trailer park property and some of the details of a compromise agreement being considered by Klaas and the remonstrators. Klaas did not authorize the disclosure of this information.

As noted under Counts I & II, the Court of Appeals ordered the Respondent's fraud motion expunged and stricken. Thereafter, on July 26, 1973, the Respondent, on behalf of Martin J. Connelly and Dorothy Connelly, et al., filed a suit in Lake Superior Court against 42 defendants, including Klaas and Reed, charging that Defendants perpetrated a fraud on the taxpayers of Lake County. Judge Kaul, on September 25, 1973, enjoined the Connellys and others with notice from prosecuting this cause in that it sought to set aside a settlement of a class action in Lake Circuit Court. On June 24, 1974, Judge Moody ordered the Respondent's appearance stricken in that the Respondent had previously represented Klaas and now was representing parties with adverse interests in litigation involving the same subject matter.

In view of the above findings of fact, this Court now concludes that Klaas employed the Respondent's law firm in numerous matters, paid the firm $7,000 and was represented by the firm until its dissolution in 1973. It is also our conclusion that the Respondent charged his former client with misconduct in the same lawsuits his firm participated in prior to dissolution of the firm, that the Respondent filed a lawsuit against a former client concerning matters identical to those involved in his former firm's representation, and that the Respondent used documents furnished by Klaas upon which to predicate his allegations of fraud. Accordingly, this Court now further finds that the Respondent revealed confidences, used confidential information for his personal advantage, violated a disciplinary rule, engaged in conduct which adversely reflected on his fitness to practice law, and, by filing a lawsuit against Klaas, attempted to use confidences to the disadvantage of a former client in violation of the Code of Professional Responsibility as charged under Counts III and V of the amended verified complaint.

In Count VI of the amended complaint the Respondent is charged with attempting to solicit a potential client, Russell C. Hooper. This alleged conduct is prohibited by Disciplinary Rule 2-103(A). The Respondent is further charged under this Count with violating a disciplinary rule [1-102(A)(1)] and engaging in conduct which adversely reflects on his fitness to practice law [1-102(A)(6)].

After review of the pleading filed in this cause, this Court now finds that on March 14, 1973, Crumpacker wrote Russell C. Hooper and stated that there was a need for someone to step in for Dedelow and combat the fraud that was being perpetrated on the taxpayers of Lake County. In response, Hooper wrote the Respondent and indicated that he knew nothing of this matter. Hooper declined to participate in this litigation. It appears that this second letter was written in Reed and Abrahamson's office, but signed by Hooper.

These findings of fact establish that the Respondent attempted to solicit legal business. This conduct violated Disciplinary Rules 2-103(A), 1-102-(A)(1), and 1-102(A)(6) as charged under Count VI of the amended complaint.

Counts XI, XII, and XIII of the amended complaint involve the Respondent's conduct during the Klaas litigation noted above under Counts III and V. In Count XI the Respondent is charged with publicly disseminating a pleading containing improper extrajudicial matters. He is specifically charged under the

Code of Professional Responsibility with violating the following Disciplinary Rules:

1-102(A)(1) - Violating a Disciplinary Rule;
1-102(A)(5) - Engaging in conduct prejudicial to the administration of justice;
1-102(A)(6) - Engaging in conduct which reflects adversely on his fitness to practice law;
7-107(G)(1) - Making an extrajudicial statement in a pending civil case relating to evidence regarding the occurrence or transaction involved;
7-107(G)(2) - Making an improper extrajudicial statement concerning the character, credibility or criminal record of a party, witness or prospective witness;
7-107(G)(4) - Making an improper extrajudicial statement regarding his opinion as to the merits of claims by a party; and
7-107(G)(5) - Making an improper extrajudicial statement relating to a matter reasonably likely to interfere with a fair trial of the action.

We have examined all matters submitted in this cause and now find that during the Klaas litigation a motion was filed to strike the Respondent's appearance. On June 10, 1974, Respondent filed a one hundred page brief in support of his objections directed toward the Motion to Strike and sent a copy of such brief to over 80 attorneys and judges not associated with the Klaas case. The following matters, which are indicative of the contents of the brief, have been taken from its table of contents:

III. STATEMENT OF THE FACTS. 11-31
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B. The Connellys, The 2700 Demonstrators, and The Citizens, Voters and Taxpayers of Lake County, Indiana, Won A victory Before The Board Of County Commissioners On The Evening Of May 10, 1971. The Board of County Commissioners Voted Against the Rezoning of the Dinwiddie Farm (Apple Valley Village). 15-16

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E. Flush With Two Quick Knock-Out Victories Over Ruman And Hungry For Cash, Reed And Muha Make A Five Million ($5,000,000) Boner In Urging Dannie's Mobile Homes, Inc. to Proceed, Full Steam Ahead, With The Building Program. They Know That They Can Win Before Judge Pivarnik In The Third Suit. They Discount And Ignore The Potential Round House Punch of Robert Berger, Ruman's Law Man, In Appeal Work. They Make The "Drop" For Klaas And The Secret Beneficiaries of Trust No. 1653. 23-26

F. Much To The Further Surprise of Reed, Skozen, Muha, Klaas, The Secret Beneficiaries of Trust No. 1653 And Dannie's Mobile Homes, Inc., Et Al., Saul I. Ruman And Robert Berger, His Law Man, Win A Smashing Victory For The 2700 Remonstrators, Citizens, Taxpayers And Voters, In The Indiana Court of Appeals On June 29, 1972. The Sell-Out Price For Saul I. Ruman And Class Plaintiffs Bryant, Jr., Paul Hoffman And Martin Hoffman (Under Negotiation Since November 2, 1971) Sky-Rocketed Accordingly. . 26-29

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VI. BY MAKING AN UNCONSCIONABLE DEAL WITH KENNETH D. REED, COUNTY ATTORNEY JOSEPH L. SKOZEN AND ASSISTANT COUNTY ATTORNEY WILLIAM J. MUHA TO UPHOLD AND PROTECT THE COLLUSIVE "DECLARATORY JUDGMENT," PURPORTING TO REZONE APPLE VALLEY VILLAGE, SAUL I. RUMAN AND THE CLASS PLAINTIFFS, JOHN BRYANT, JR., PAUL HOFFMAN AND MARTIN HOFFMAN, BECAME PARTIES TO THE PLAN, SCHEME AND CONSPIRACY JUST AS THOUGH THEY WERE PRINCIPALS IN THE BEGINNING 46-49

VII. SAUL I. RUMAN JOINS WITH KENNETH D. REED, HAROLD ABRAHAMSON AND ASSISTANT COUNTY ATTORNEY WILLIAM J. MUHA IN "COVER-UP" ACTIVITIES IN THE LAKE CIRCUIT COURT WITH THE PURPOSE OF BRINGING ABOUT A DISMISSAL OF THE CONNELLYS' ACTION IN THE LAKE SUPERIOR COURT IN HAMMOND 49-54

VIII. SAUL I. RUMAN'S "MOTION TO STRIKE OWEN W. CRUMPACKER'S APPEARANCE ON BEHALF OF CONFLICTING PARTIES, TO STRIKE CERTAIN LETTERS AS FALSE AND IMPROPER AND TO FIND OWEN W. CRUMPACKER IN CONTEMPT OF COURT" IS SIMPLY ONE FURTHER OVERT ACT IN THE PLAN, SCHEME AND CONSPIRACY HERETOFORE DESCRIBED. THE

The above findings establish that the statements contained in the brief were extrajudicial and that such extrajudicial matters were intentionally directed by the Respondent to members of the Bench and Bar, who had no relationship to the pending litigation.

It appears that Respondent's intent was to have such matter communicated generally among the Bench and Bar. Sending such a document, to over 80 individuals reasonably suggests an intent for public dissemination and we conclude that these extrajudicial statements were made in such a manner that a reasonable person would expect them to be disseminated by means of public communication.

Accordingly, this Court holds that Respondent made extrajudicial statements in a pending civil case concerning evidence regarding the occurrence or transaction involved, the character or credibility of parties, witnesses and prospective witnesses, his opinion as to the merits of claims and concerning matters reasonably likely to interfere with a fair trial. In so doing Respondent violated the Disciplinary Rules 7-107(G)(1), (2), (4), and (5), 1-102(A)(1), (5), and (6).

In the Klaas litigation, as noted before, Judge Moody struck Respondent's appearance by reason of a conflict of interest. The Respondent thereafter wrote two letters excoriating Judge Moody. His letter of July 1, 1974, to Judge Moody forms the basis of Count XII; the one of August 8, 1974, to Richard Grabham, Count XIII. Both letters were released to the press. Together with the general charges of misconduct under Disciplinary Rule 1-102(1) and (6), the Respondent is specifically charged with violating Disciplinary Rule 8-102(B) which provides:

> "A lawyer shall not knowingly make false accusations against a judge or other adjudicating officer."

After reviewing all matters submitted herein, we now find that on June 24, 1974, Judge Moody, as Special Judge in the Klaas case, entered an order finding that the Respondent was engaged in a conflict of interest by attempting to represent the Plaintiffs (Connellys) in this litigation; Judge Moody ordered Crumpacker's appearance striken. The judge did not release a copy of his order to the press; however, the press obtained the order and published such findings. On July 1, 1974, Respondent wrote Judge Moody a letter in which the Respondent

order, among other accusations. Respondent then petitioned for Judge Moody to be joined in the disciplinary proceeding against the Respondent. Judge Moody replied with a 10 page response. The Respondent countered with a 17 page letter to Richard Grabham, then Executive Secretary of the Disciplinary Commission, generally suggesting that Judge Moody was engaged in the conspiracy taking place, that he lived under a rock, was somehow associated with the Watergate scandal, was in Reed's vest pocket, and was otherwise a corrupt public official. Respondent made attempts but wholly failed to prove any of the acts of impropriety alleged in his letters. The Respondent furnished copies of his correspondence to the news media in both instances.

In light of the above facts we find that after receiving an unfavorable ruling from Judge Moody, the Respondent launched an unmitigated assault on Judge Moody's character and integrity. The accusations contained in his letters are totally unreasonable and 'lse. The Respondent should have known and probably did know such accusations were false. Thus, we conclude that Respondent engaged in the misconduct charged under Counts XII and XIII and violates Disciplinary Rules 8-102(B) and 1-102(1) and (6).

The remaining counts in the amended complaint are not associated with the Dedelow and Klaas litigation. The charges of alleged misconduct under the remaining counts generally relate to the Respondent's course of conduct in various lawsuits, demonstrated manner of representation, and proclivity to use a legal proceeding as a vehicle to punish his enemies.

Count XIV charges Respondent with making improper statements during a closing argument in Hammond City Court. He is alleged to have improperly argued that Special Judge Stanish had a connection with the Police Department and that the prosecution of this case against a railroad was politically motivated. The Respondent is charged with violating the following provisions of the Code of Professional Responsibility:

> D.R. 1-102(A)(1) - Violating a disciplinary rule;
> D.R. 1-102(A)(4) - Engaging in conduct involving fraud, deceit, dishonesty or misrepresentation;
> D.R. 1-102(A)(5) - Engaging in conduct which is prejudicial to the administration of justice;
> D.R. 1-102(A)(6) - Engaging in conduct which reflects adversely on his fitness to practice law;
> D.R. 7-106(C)(1) - While appearing before a tribunal, alluding to a matter he has no reasonable

supported by admissible evidence;
D.R. 7-106(C)(6) - During the Course of a proceeding, intentionally or habitually violating an established rule of procedure or evidence; and
D.R. 8-102(B) - Knowingly making a false accusation against a judge.

This Court has examined all matters presented herein and now finds that during May, 1973, John Stanish sat as Special Judge in State v. Gallison. The Respondent represented the defendant who was charged under a state statute for improperly blocking an intersection; Gallison was a railroad engineer. During his final argument in this case, the Respondent stated that the prosecution was politically motivated; that the arresting officer was under the influence of the prosecutor and Court and had to follow instructions in order to advance within the police department; that he (arresting officer) was taking his orders from the Court, which was a police court; that the defense was stuck with the Special Judge; and that the judge's law partner's father was a police officer. No evidence was introduced by Respondent to support these allegations.

Special Judge Stanish called a recess and admonished the Respondent, during which the Respondent continued to shout at the Judge.

The above findings establish that Respondent made statements which he had no reason to believe were supported by admissible evidence. He intentionally and habitually violated an established rule of procedure and knowingly made false accusations against a judge. Respondent's conduct is a misrepresentation in a court of law, is prejudicial to the administration of justice, reflects adversely on his fitness to practice law and is violative of the Disciplinary Rules. Accordingly, this Court concludes that Respondent did engage in the misconduct charged under Count XIV of the amended complaint and did violate the Disciplinary Rules charged therein.

We will next review the charges under Count IV(A) and (B). This count grows directly out of the dissolution of the firm of Crumpacker, Abrahamson and Reed. The Respondent is charged with refusing to return files to clients after they had indicated a desire to be represented by his former partners. Specifically, the Respondent is charged with violating a Disciplinary Rule, engaging in conduct prejudicial to the administration of justice, and in engaging in conduct which adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(1), (5) and (6). Additionally, under Count IV the Respondent is charged with violating Disciplinary Rule 9-102(B)(3) and (4) which provide that a lawyer shall maintain complete records of clients'

funds, securities and other properties, render appropriate accounts, and promptly pay or deliver to the client, as requested, funds, securities or other properties to which the client is entitled.

After reviewing all matters submitted in this cause, this Court now finds that Kenneth Reed while a member of the firm, was attorney for Robert Croner during Mr. Croner's life. Mr. Croner owned a meat market. When Croner died in September, 1972, Mrs. Croner employed the firm to handle the estate; she gave to Reed tax records, business records, insurance policies, titles and personal checks. When the Crumpacker firm dissolved in 1973, Reed did not take the Croner file with him.

In April, 1973, in order to prepare tax returns, Mrs. Croner and her accountant attempted to get the records which had remained under Respondent's control in the firm's premises. They made an appointment with the Respondent, waited one hour, but he did not appear. She returned the next day with her son and again the Respondent did not show. During the summer of 1973, Mr. Lloyd Ahlf contacted the Respondent on three different occasions attempting to get the Croner file for Mrs. Croner.

In January 1974, Mrs. Croner and her son met with the Respondent. Mrs. Croner advised the Respondent that she came to pick up her records. Respondent instructed her to be quiet and listen to him. When she advised him that she came for a purpose, the Respondent told her and her son to "Get the hell out." The Respondent then had his secretary bring in the records and tried to tell Mrs. Croner that he would like to settle the estate. Respondent pulled several matters out and started reading them. Mrs. Croner told the respondent that she wanted Reed to represent her. Finally, the Respondent instructed Mrs. Croner and her son to leave. He walked them to the elevator and was reported to have said "You can get the hell out of here. Stay out of here. You will never get your records."

Thereafter, Mrs. Croner's accountant had correspondence with the Respondent in an attempt to get the records. The Respondent has never turned the records over to Mrs. Croner.

During the hearing of this cause the Respondent testified that he never had Mrs. Croner's file. He had the office file, but not her file. He did not give her the file because he felt she did not have the proper attitude and because he believed there may have been an unreported gift of certificates of deposit, given in contemplation of death. The Respondent added that this may have

created liability on h.. part and he had an obligation to see that the taxes were properly reported. His proof of this allegation was extremely weak and speculative.

As a consequence of not having the business and personal records, the personal files of Mr. Croner had to be reconstructed. The time involved in obtaining duplicate documents cost the estate penalties and interest in the amount of $1,275.

The Respondent's testimony is specious, at best, and in great part inconsistent. He testified that he did not have Mrs. Croner's file, but he did have an office file. He said he did not have any personal record, but then states that he refused to turn over the file because he noted certain unreported transfers of certificates of deposit.

On the other hand, the testimony of the Disciplinary Commission's witnesses was consistent and there appears to be no motivation for prevarication on their part.

In light of the findings and considerations set out above, we conclude that the Respondent acted in a manner which was prejudicial to the administration of justice and which reflected adversely on his fitness to practice law. This constitutes a violation of Disciplinary Rules 1-102(A)(1), (5), and (6).

We further conclude that the findings establish that the Respondent did not provide an adequate account of the properties in his control nor deliver such records as requested. This conduct is violative of Disciplinary Rules 9-102(B)(3) and (4).

As to Count IV(B), this Court now finds that Kushner and Gersack were property owners involved in a condemnation proceeding. In 1968 they retained the Crumpacker firm to represent them in such litigation. Thereafter, the State paid in $312,435 and the plaintiffs on petition withdrew this amount pending the resolution of the condemnation litigation. Under the contingent fee agreement drafted by Reed, the firm was to receive 29% of the recovery. When the money was withdrawn, the Crumpacker firm was given $70,000. The money was deposited in the firm's account and eventually distributed. Additionally, the clients had paid $6,000 to $7,000 for court costs. The Respondent personally agreed to hold the clients harmless for any loss on the withdrawal bond posted. In 1973, Kushner made ten to twelve attempts to contact the respondent relative to the delay in this litigation. In the spring of 1974, Kushner, Gersack and Respondent finally had a meeting. The clients asked for an

informed Respondent in writing that they wanted their file returned as well as their money. The Respondent did not return the file or money. Instead, the Respondent filed a petition for leave to withdraw his appearance in the condemnation proceeding which had been venued to the LaPorte Circuit Court. In March 1975, the LaPorte Circuit Court granted his petition to withdraw and ordered him to return all files, papers, and unearned fees. The Respondent failed to do so and was found in contempt.

The findings set out above clearly establish that the clients were entitled to their file when they made their written demand. Respondent's refusal to do so constitutes misconduct and is violative of Disciplinary Rule 9-102(B)(3) and (4). Such conduct is prejudicial to the administration of justice and adversely reflects on Respondent's fitness to practice law, in violation of Disciplinary Rule 1-102(A)(1), (5) and (6).

Counts VII, VIII, IX and X concern the Respondent's outbursts during proceedings.

Under Count VII of the amended complaint the Respondent is charged with verbally and physically assaulting attorney William Spangler on or about May 6, 1971, in the library and foyer of the Lake Superior Court in Hammond.

Having reviewed all matters submitted in this cause, this Court now finds that on May 5, 1971, Spangler met with the Respondent in a settlement conference in the Hammond Courthouse. Also attending this conference were Jack and Helen Herschbach and attorneys G. Edward McHie and Edward Glendening. The case in question involved Herschbach trust funds.

During the course of the conference Respondent became involved in a confrontation. The commotion was initiated by Respondent who grabbed Spangler when he was attempting to leave. These findings demonstrate conduct which reflects adversely on Respondent's fitness to practice law and is thusly violative of Disciplinary Rule 1-102(A)(1) and (6) as charged in the complaint.

Under Count VIII the Respondent is charged with calling Attorney Edward McHie, among other things, a "little yellow son-of-a-bitch" during the course of the taking of a deposition. Specifically, the Respondent is charged with violating a Disciplinary Rule [1-102(A)(1)], engaging in conduct prejudicial to the administration of justice [1-102(A)(5)], engaging in conduct which reflects adversely on his fitness to practice law [1-102(A)(6)], and engaging in undignified or discourteous conduct degrading to a tribunal [7-106(C)(6)].

This Court has examined all matters presented herein and now finds that during the course of the taking of Mr. Edward Schaeffer's deposition in 1970, the Respondent called opposing counsel, McHie, on the record dense, a culprit, so lacking in mental capacity as not being able to find his way to the toilet, too big for his britches, a skunk, a jack-leg, lazy, tricky, unfit to practice law, and a little yellow son-of-a-bitch. Respondent apologized to McHie on the next day. In November 1974, Respondent wrote McHie and amended his remarks to substitute "ring-tail" for "little yellow."

Had the conduct of Respondent been committed after the effective date of the Code of Professional Responsibility, the evidence presented in this cause would be sufficient to support a finding of misconduct as charged under Count VIII of the amended complaint. This Court, however, has found that the incident in question took place prior to March 8, 1971, the effective date of the Code. Since the amended complaint did not charge the Respondent with misconduct under predecessor provisions, we now find for the Respondent under Count VIII.

In Count IX the Respondent is charged with directing discourteous and derogatory remarks toward opposing counsel and the Plaintiff during the course of a hearing before Judge Pinkerton. As under Court VIII, the Respondent is charged with violating Disciplinary Rules 1-102(A)(1), (5), and (6) and 7-106(C)(6).

This Court following review of all matters submitted in this cause now finds that on March 24, 1974, before Judge Pinkerton, during a hearing on a protective order, the Respondent directed the following remarks and others toward opposing counsel, Johnson, and/or the Plaintiff, Winslow Van Horne: (Toward Johnson): "Now if your Honor isn't going to cover him up, fine, kiss him off, send him back to the country club, let him get up on a bar stool and continue.' . . .'there he could find better people to argue with as your Honor is aware"; (Toward Johnson): ". . . a young man who leaves the bar stool out of the men's grill . . . ."
(Toward Johnson): ". . .this little pipsqueak who couldn't make a living except for Hipsco"; (Toward Johnson) ". . . he couldn't make a living if Don Mitchell gave him a pocket full of cash."; (Toward Van Horne): ". . .better get back over and sober up"; (Toward Van Horne): "Van Horne, you go back to Auburn and get drunk and get your god damned liver. . . ."

These remarks were improper, but more than that these were direct, personal, insulting references directed toward opposing counsel and the

probably would not be sufficient to warrant serious discipline. However, this one Count does not stand alone; Respondent's behavior in the case noted under this count appears to be indicative of his method of operation. When reviewing this record, it is evident that in many instances the Respondent browbeats, shouts at and attempts to intimidate his opponents. His tirades are, at times, irrational and his rage appears to be uncontrolled. Ethical consideration 7-37 has application in the present circumstances:

> EC 7-37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

In light of the above considerations, we now conclude that the Respondent violated Disciplinary Rules 7-106(C)(6) and 1-102(A)(1), (5), and (6), as charged under Count IX of the amended complaint.

Count X charges the Respondent with making insulting remarks toward opposing counsel, John Patrick McQuillan, and the witness during the taking of a deposition. Respondent is charged with the same violation of the Code as under Counts VIII and IX, i.e., violation of Disciplinary Rules 7-106(C)(6) and 1-102(A)(1), (5), and (6).

We now find that the incident involved in this Count was the deposition of Henry Herschbach, an 82 year old man. During such deposition, which lasted eleven days, the Respondent shouted at the witness, pointed his finger in the witness' face and verbally abused the opposing counsel and the witness. The Respondent frequently accused opposing counsel of corruption, "hanky-panky", scheming to convert and steal funds and documents, falsification of records, swindling, suborning perjury, compounding a felony, dishonesty and evasive conduct. On the final day, during the course of the deposition and in the presence of the deponent, the deponent's wife, the plaintiff, and others, the Respondent told opposing counsel, John P. McQuillan, on three occasions, that Respondent was going to stick or put McQuillen's head in a "toilet bowl." During the course of the said deposition the Respondent also accused the deponent of dishonesty, lying, corruption, conversion, embezzlement, and other crimes. A number of these accusations were accompanied by Respondent pointing at the eighty-two year old witness, shaking his hands and fingers at the

witness, and shouting at the witness.

In light of the above findings, this Court now concludes that the Respondent engaged in conduct which adversely reflects on his fitness to practice law and which was prejudicial to the administration of justice. Accordingly, we now further find that the Respondent violated Disciplinary Rules 1-102(A)(1), (5), and (6) as charged under Count X of the amended complaint.

Under Count X, as noted above, the Respondent is also charged with violating Disciplinary Rule 7-106(C)(6), which prohibits undignified and discourteous conduct when appearing in a professional capacity before a tribunal. The Respondent's misconduct under this count transpired during the course of a deposition. The issue thusly becomes whether or not conduct during the course of a deposition is conduct "before a tribunal" under the above-cited Disciplinary Rule. This rule is predicated on the need for an orderly procedure to resolve disputes. Such procedure envisions spirited debate and intense examination. But an orderly process of dispute resolution is not possible unless there is respect for the procedures and an attempt to work within an established framework. Discourteous and undignified behavior detracts from the orderly process of dispute resolution and clearly falls outside an acceptable level of attorney conduct. It appears insignificant whether such conduct occurs during the taking of a disposition or during the examination of a witness at trial. Both instances require an orderly process and mandate customary courtesies. Both a deposition and a trial are governed by the rules of Court and are under the auspices of the Court. Accordingly, we now find that the Respondent's conduct during the course of the Bernbach deposition violated Disciplinary Rule 7-106(C)(6), as charged under Count X of the amended complaint.

Under Count XV the Respondent is charged with filing a lawsuit alleging fraud and conspiracy when such assertion had been previously litigated in Federal Court and found to be a groundless claim. It is asserted in the complaint that the Respondent pursued this course of litigation as a means to annoy and harass the attorneys opposing him. The Respondent is charged with violating the general provisions of Disciplinary Rules 1-102(A)(1), (5), and (6) and Disciplinary Rule 7-102(A)(1) which prohibits deliberately filing a suit for a client when it is obvious that such action would serve merely to harass another.

Having reviewed all matters submitted in this cause, this Court now finds that in May 1974, the Respondent prepared and filed a complaint in Lake Superior Court on behalf of Woodmar Realty Company. He was authorized by his client to do so. Named as defendants, among others, were Walter McLean and Herschel Davis. These individuals were the trustee and trustee's attorney in a bankruptcy proceeding involving Woodmar Realty. Such previous proceeding was commenced in 1941 and concluded in 1969 with the trustees being discharged. Also named as defendants were Edmond Leeney, Charles Levin, and Floyd Murray who had represented interested parties adverse to the Respondent during the course of the bankruptcy proceeding.

During the course of the proceeding in Federal Court, the Respondent attempted to assert fraud on the part of McLean and Davis. The Respondent filed an amended complaint which was dismissed. On appeal, the United States Court of Appeals, Seventh Circuit, affirmed the decision of the district Court. Woodmar Realty Company v. McLean (1961), 294 F.2d 785. Additionally, the Court of Appeals commented on the Respondent's conduct in such matter.

> ... This opinion might rest there and the judgment be affirmed without further discussion, were it not for the pervading impression gathered from this record that the removal petition constitutes an attempt by appellant's attorney, Mr. Crumpacker, to harrass appellees in the continued performance of their official functions and a near-contemptuous abuse of the processes of a federal court. (294 F.2d at 786)
>
> There is, however, more involved here than the time element, namely, a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him. . . . (294 F.2d at 792)
>
> . . . We think that fact of timing is significant, and it is certainly consistent with the pattern which the record reveals of charging both the dead and the living with fraud whenever an adverse ruling is contemplated or becomes a reality. (294 F.2d at 792)
>
> Because we are convinced that the record in this case presents a contemptible, if not contemptuous, abuse of the legal processes of a federal court, we have dwelt at length upon a historical resume of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity of the question with which we deal. We find a sordid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy. We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the future. (294 F.2d at 794-5)

The proceeding filed in the Lake Superior Court was challenged in Federal District Court. In reversing a decision to the contrary, the Court of Appeals, Seventh Circuit, ultimately held that the general principles of res judicata precluded the Respondent from relitigating the issue determined in the prior federal proceeding. Samuel C. Ennis and Company Inc., et al. v. Woodmar Realty Company, et al., 542 F.2d 45. This Court now takes judicial notice of such decision.

The above findings of fact establish that upon an examination of the history of this litigation a very reasonable inference can be drawn that Respondent's motive in filing this suit in Lake Superior Court was to harass.

Whether or not the Respondent was authorized to file the suit in Lake Superior Court does not appear crucial under Disciplinary Rule 7-102(A)(1); this provision makes no exception for an attorney who has a client's authority. Disciplinary Rule 7-102(A)(1) precludes an attorney from filing harassing litigation.

In light of the above considerations this Court concludes that Respondent filed a suit and took action on behalf of his client when it was obvious that such suit would only serve to harass and maliciously injure others; that such conduct is a violation of Disciplinary Rule 7-102(A)(1). Respondent's actions relative to this count are further violative of the provisions of Disciplinary Rules 1-102(A)(1), (5), and (6).

Counts XVI and XVII emanate from the Respondent's conduct in the case of Dubois v Union Trust Company of Indianapolis, et al. It is charged that on the day of trial of this cause, the Respondent asked for a continuance to substitute the trustee in bankruptcy as the real party defendant. The Respondent had known for years that the trustee was the real party in interest, but waited until the last day. For such conduct the Respondent is specifically charged under Count XVI with violating the general provision of Disciplinary Rules 1-102(A) (1), (5), and (6), and Disciplinary Rule 7-102(A)(1) which prohibit taking an action merely to harass another. Special Judge West indicated that because of the delaying tactic being employed he would impose a sanction against the Respondent. Crumpacker then commented in the record that this was a lot of "bunk" and that he would "waltz" Judge West to the Disciplinary Commission if the sanction were allowed to stand. The Respondent is charged under Count XVII with undignified or discourteous conduct before a tribunal in violation of Disciplinary Rule 7-106(C)(6), and general violations of the Code of Professional Responsibility, to-wit: Disciplinary Rules 1-102(A)(1) and (6).

Upon examination of the matters submitted in this cause, we now find that on October 12, 1973, the Respondent, in a matter that had been pending for a number of years, moved to substitute parties. The plaintiff objected. The trial judge indicated that the change in parties had been known to defense counsel for a long time prior to the trial date and no attempt had been made to substitute and further indicated an inclination to impose sanctions on defense counsel, Respondent. The Respondent then stated in open court, "that's the most abusive order I have ever heard a Judge emit from the stand, I, I'm going, if that order stands, we're going to take it up with the Disciplinary Commission and we'll, and I represent to you that as an officer of this Court you're going to have to account to the Commission for any attempt to assess attorneys fees against me and for these, and, do you understand? And you're going to get, we'll waltz you down there before the Commission as quickly as you can get there, do you understand?" Respondent added "and even faster. The idea of that kind of bunk."

In light of the above findings, this Court concludes that the acts of the Respondent in the Dubois v. Union Trust Company of Indianapolis case constituted undignified and discourteous conduct before a tribunal. Accordingly, this Court now finds that the Respondent violated Disciplinary Rules 1-102(A)(1) and (6) and 7-106(C)(6) as charged under Count XVII of the amended complaint. We further find, however, that the evidence is insufficient to support a finding of misconduct as charged under Count XVI of the amended complaint.

Under Count XVIII of the amended complaint the Respondent is charged with violating Cannon 11 of the American Bar Association's Canons of Professional Ethics and under Count XIX of the amended complaint the Respondent is charged with violating Disciplinary Rules 1-102(A)(1), (5), and (6), 7-101(A)(3) and 9-102(B)(4). Both of these Counts concern the internal financial affairs of the Respondent's former law firm. We anticipate that the underlying issues in these charges will be resolved in the final settlement of the law firm obligations and assets. We find the evidence of record insufficient to support a finding of professional misconduct under Counts XVIII and XIX of the amended complaint.

It now becomes the duty of this Court to impose an appropriate disciplinary sanction by reason of the above-cited acts of misconduct. As this Court has noted on several previous occasions, in reaching such decision many factors are considered, such as the nature of the violation, the specific acts of misconduct, this Court's responsibility to preserve the integrity of the Bar,

and the risk, if any, to which we will subject the public by permitting the Respondent to continue in the profession or be reinstated at some future date. In re Vincent (1978), _Ind._, 374 N.E.2d 40; In re Tabak (1977), _Ind._, 362 N.E.2d 475; In re Murray (1977), _Ind._, 362 N.E.2d 128.

In the present case, the evidence presents a particular course of conduct totally contrary to the effective administration of justice and all standards of professional conduct. The acts set out under the various counts wherein this Court has found misconduct create a picture of a vicious, sinister person, tunnel-visioned by personal pique, and willing to forego all professional responsibilities which conflict with acts of preconceived vengence on personal enemies. The Respondent's wrath has no bounds and his ire affixes to any and all persons who oppose him, even if such opposition is in a professional capacity. The Respondent verbally insults his adversaries at a personal level. Professional advocacy is totally submerged into vitriolic obliquy and all of the Respondent's adversaries, professional or personal, immediately become part and parcel of a grand fraud or conspiracy being perpetrated on some party for whom the Respondent asserts representation.

The course of conduct demonstrated by the Respondent has no place within the contemporary practice of law. A lawyer owes an obligation to his client to provide the best representation possible, an obligation to the legal profession to strive for justice, and an obligation to himself to meet the demands of his profession. When a lawyer looses sight of his purpose and uses the legal system for personal vengence, he fails in his obligations to his client, profession, and self. In the present cause the Respondent used information gained in the course of professional services to form the basis of a suit against his former client; he employed the legal system as a vehicle for personal vengeance; and in the end the Respondent abandoned any standard of professional behavior. This conduct, unfortunately, represents a total failure of all obligations.

In light of the above considerations, this Court is forced to conclude that the strongest sanction available under the Constitution of the State of Indiana must be imposed to preserve the integrity of the legal profession and to protect the public from future acts of misconduct as found in this case. It is therefore ordered that by reason of the misconduct found in this cause the Respondent be, and he hereby is, disbarred as an attorney in the State of

Indiana.[1]

Costs of these proceedings are assessed against the Respondent.

Pivarnik, J., not participating.

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1) This Court finds it imperative to comment on Respondent's behavior during the lengthy hearing of this matter. His outbursts, insults toward witnesses and opposing counsel, and insinuations of collusion on the part of the Commission and its staff, went far beyond any measure of effective advocacy. The record is replete with instances of such conduct demonstrating a total disregard for the proceeding itself, and courtroom decorum generally. The following exerpts are but a few examples:

> Tr. 127; (I)f the Court undertakes to listen to this Commission that it isn't interested in maintaining the honorable integrity of the profession, but is interested rather in attempting to smear and destroy a reputation of a lawyer, then I say that is the way to let them foreclose any enquiry into this case."
>
> Tr. 139; To witness Donnersberger: "You can remember the magic words that are in the Commission's foolishness?" Hughes: "Your Honor, I object to the representations Mr. Crumpacker is making about the Commission." Respondent: "Why don't you leave."
>
> Tr. 141; ". . . (A)s far as I am concerned, the Court (J. West) did nothing but drink himself to oblivion at the Tallyho down in the outskirts of Peru and conduct night court for the Bunker Hill Academy. And he didn't do a damn thing except get drunk and get thrown out of office when he ran again."
>
> Tr. 175; "My question was did I ask you (Donnersberger) Mr. Courtesy, for the benefit of the smirking people of the grievance committee who are, in my opinion, eighteen karat H.A.'s."
> Hughes: "Your Honor, I don't think we should have to sit here and be subjected to that ____."
> Crumpacker: "I know you don't, you're too dumb. But I don't like these smirks at my back. When smart alecks make some statements. . . ."
>
> Tr. 218; (When Respondent's Motion to Separate Witnesses was denied) "We are going to seek redress against these men and it's going to be a solid lawsuit against them for vicious attacks upon the character and integrity. . . ."
> Hughes: "Your Honor, would the record show that when Mr. Crumpacker said a moment ago that he was going to file solid lawsuits that he pointed in the direction of Mr. Hughes and Mr. Stevens and Mr. Grabham."
>
> Tr. 588; "Substantially, the law firm Abrahamson, Reed & Tanasijevich is known in Hammond as Toad, Weasel and Skunk and they have been actively participating under that appellation."
>
> Tr. 771; About Abrahamson: "Well, it's irritating because I know him well enough to know that he couldn't make a living on his own hook. . . . If he is going to sit here, if you won't throw him out, and he should be thrown out of all courts of law, at least he should be admonished not to be passing sweetheart notes to his sweetheart Hughes and Hughes."

Tr. 788; I think that your (Hughes') courtesy couldn't get by in the lowest J.P. Court. When the J.P. Courts are all abolished, why, you will be on the relief rolls. . . ."

Tr. 797; "My defense is based on the truth and I accuse you (Hughes) of falsifying the document that is tendered (Ex. 25 - later admitted).

Tr. 987; (During the introduction of Plaintiff's Ex. 27 and objections thereto) "Now, because Mr. Abrahamson is here and directing the travelling road show and gets ahold of Mr. Hughes and says now. . . ."

Tr. 1076; (In reference to witness McQuillan) ". . .I think that he should be horsewhipped and put in jail, that's my opinion."

Tr. 1111; "And Mr. McQuillan deserves more than having his head stuck in a toilet bowl."

Tr. 1114; "Now, if this outfit, this Disciplinary Commission, is permitted to come up and take lawyers apart in pending cases and try to discipline another lawyer because he calls another guy (McQuillan) that swindled his client out of about a hundred thousand dollars in the course of a deposition that he's been evading, why, I say, the Disciplinary Commission is going to be the most foolish, inappropriate bunch of time wasters, and I think that that's what we are confronted with here. Now, Mr. Hughes is up here only because Abrahamson and Reed who have been here ever since the case started want him here."

Tr. 1118; "He (McQuillan) is as sleek as anybody. You (Hughes) haven't been around."

Tr. 1119; "I think it is a lot of bunk. He (Hughes) doesn't know anything about this case. I happen to know about this case and Mr. Hughes does not."

Tr. 1157; In an objection to question posed to witness Stanish: "And then to come in here with this preposterous bunch of bunk and of a political guy, to come in and try to create something that did not happen in chambers is absolutely ridiculous and we object to any effort on the part of this disgruntled, defeated candidate for public office to blame somebody else. . . ."

Tr. 1161; "This man (Stanish) is beyond abuse. I know him like a book."

"And I think it's an outrage to be here. And you (Hughes) never tried a case and you will never try one and win. . . ."

Tr. 1166; "(Y)ou (to Stanish) don't understand common sense or English."

Tr. 1213; "I represent that he (Spangler) was a swindler and that he was attempting to swindle the Herschbach family."

Tr. 1216; To witness Spangler while on the stand: "There isn't anything you wouldn't do, in my opinion. I think that you have swindled more people than you'll ever know,. . . ."

Tr. 2443; "I think that he (J. Moody) should be removed from office, this man, for violating the natural privileges of the citizens and taxpayers of the county."

Tr. 1505; "Rudolph Val Dawson, the syndicate boss. . . ."

Tr. 1519; "That was Reed who was the fellow that had Moody in his pocket, . . ."

Tr. 1520; ". . . I object to the Disciplinary Commission aiding and abetting the continued perpetration of a fraud on the courts through trying to cover the Declaratory Judgment of August 6, 1971, . . ."

Tr. 1540; On direct examination: ". . . my feeling is that he (Mr. Grabham) is a disgrace to the legal profession. He is a disgrace to

Tr. 1558; "The Gestapo has not asked me to produce a single record."
Hughes: "You mean us I guess?"
Crumpacker: "Yes, I am talking about the Disciplinary Commission."

Tr. 1161; Hughes to Crumpacker on direct:
"I wonder if you might at this time read into evidence the names of those persons to whom you sent copies of plaintiff's Exhibit 45."
Crumpacker: "No I'm not going to do it. . . . I will be damned if I am going to become an agent for this foolish neck-tie party by reading into evidence copies of letters that have no bearing on any issues except the vindictiveness. . . ."

Tr. 1876; "I believe that he (Hughes) is a disgrace to the profession." Page 2630; "I assume that you are unmarried, Mr. Hughes, and that you and Mr. Abrhamson have an affinity to each other, drawn to each other, I assume you are a single person."
Hughes: "That is such an outrageous, ridiculous, asinine thing for you to say I can't even . . . are you accusing me of being a fairy?"
Crumpacker: "You wear the shoe that fits you."

Tr. 3090; "Stanish is a, that is, the judge is a liar. Stanish is a liar."

Tr. 3528; "(Y)ou (Hughes) are the biggest dead beat I have ever known."

Although being admonished on many occasions, he continued in his course of conduct. The Respondent demonstrated a total disregard of the authority vested in the Hearing Officer.

Had this Court not decided to disbar the Respondent for the conduct set forth in the complaint, this matter would be referred again to the Disciplinary Commission for the consideration of new charges based on the Respondent's conduct during these disciplinary proceedings. However, in that the Respondent has been disbarred, the processing of additional charges would be a senseless act.

Nevertheless, this Court deems it necessary to give notice that a disciplinary proceeding is a matter before this tribunal. The rules and courtesies governing an attorney's behavior have application.

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FOR THE INDIANA SUPREME COURT DISCIPLINARY COMMISSION

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IN THE

SUPREME COURT OF INDIANA

IN THE MATTER OF)
) Cause No. 974 S 187
OWEN W. CRUMPACKER)

CONTEMPT PROCEEDING

Per Curiam

This proceeding is now before the Court on an Order to Show Cause directing the Respondent, Owen W. Crumpacker, to appear and show cause why he should not be held in contempt of an Order of this Court.

Under this cause, the Respondent, Owen W. Crumpacker, was disbarred on November 29, 1978, as an attorney in the State of Indiana. In re Crumpacker, (1978) 269 Ind. 630, 383 N.E.2d 36, cert. denied 100 S.Ct. 481, 444 U.S. 979, 62 L.Ed.2d 406. On January 23, 1981, the Disciplinary Commission of this Court filed a Verified Information for Contempt, in twenty-nine Counts, wherein the Commission asserts that the Respondent, Owen W. Crumpacker, engaged in contemptuous conduct by practicing law in defiance of this Court's order of disbarment. The Order to Show Cause was issued on February 10, 1981; thereafter, several hearing dates were scheduled, but on each occasion continued at the request of Respondent or his counsel of record, John Lyons. A firm date of June 29, 1981, was set for a hearing on the Order to Show Cause. On such date, Respondent appeared without counsel and his request for a further continuance was denied. This matter was heard on June 29, July 2, July 16, and July 21, 1981; Respondent appeared, pro se, throughout the hearing. At the conclusion of the hearing, each party was directed to file its respective, proposed findings of fact and permitted to submit a brief in support of its position. Proposed findings of fact in support of respective positions have been tendered by the parties.

During the course of the proceedings to date, various motions have been filed and the parties were advised of the Court's ruling on the motions.

Accordingly, incorporating by reference this Court's decision as set forth in the transcript of the proceedings held in this cause on the above-noted dates, Respondent's motions to strike, quash and dismiss the Verified Information are denied. Respondent's motion to vacate and set aside the previously filed disciplinary action and to dismiss the amended complaint for disciplinary action likewise is overruled. Finally, Respondent's motions for discharge and for the dissolution of the verified information are denied.

There remain several pleadings yet to be resolved. The Disciplinary Commission's request for ruling will be considered at a later point in the opinion. Respondent's "Motion for Stay of Execution and the Fixing of the Terms of Supersedeas Bond" was filed prior to the conclusion of the hearing. In that such motion was premature, it is ordered striken from the record. Lastly, Respondent's Motion for Oral Argument is now overruled.

As previously stated, the Disciplinary Commission in the Verified Information filed under this cause avers, under twenty-nine counts, that the Respondent engaged in the practice of law after this Court's order of disbarment. In response to this pleading, Respondent has filed a return consisting of five paragraphs. Those contentions which relate to this Court's deliberation of the evidence will be weighed in arriving at our findings of the facts. However, before setting forth our findings, the Respondent's Return has raised several issues which warrant the attention of this Court at this time.

At the onset, we observe that Respondent attempts, in good measure, to relitigate the issues determined in the disciplinary action previously concluded under this cause; this Court will not do so. In the contempt proceeding now pending, we begin with the established fact that Respondent was disbarred as an attorney in this state on November 29, 1978, by Order of this Court.

Additionally, Respondent attempts to characterize the Order of Disbarment as void by reason of a denial of due process. Respondent argues that the disciplinary proceeding was part of a conspiracy directed against him. A parallel question was addressed in this Court's opinion disbarring Respondent.

> The Respondent, as his third affirmative defense, asserts that a former Disciplinary Commission member had a personal, financial interest in the disbarment of the Respondent; and the Commission, acting through this former member and agents "conspired and confederated with other Lake County attorneys for the accomplishment of a corrupt, illegal and unconscionable plan, purpose and scheme," such

> plan being th emoval of the respondent as (opponent in certain litigation. In Volume II of his brief in support of his objections, the Respondent attempts to weave thirty years of litigation in which he has been involved, including these disciplinary proceedings, into one grand master plan of conspiracy involving judges, courts and attorneys. The whole world is a fraud, everyone is driven by corrupt motives, and the only exception to this evil design is the Respondent, Owen W. Crumpacker. Consequently, the Respondent concludes that the whole world is now out to destroy Owen W. Crumpacker.
>
> After examining all matters which have been submitted in this cause, including the transcript of the proceeding before the Hearing Officer, this Court now finds that the Respondent has totally failed in his proof in support of his third defense. The Respondent makes allegations and in the course of questioning witnesses attempts to tie his assertions to events. However, he never accomplishes his purpose; the factual allegations raised in this defense just are not supported by credible, admissible evidence. Accordingly, this Court now finds that the Respondent's third affirmative defense is without merit. In re Crumpacker, (1978) 269 Ind. 630, 634.

In that this Court has previously found the conspiracy theory to be without merit, we again find that its naked reassertion in this contempt proceeding to be similarily without credence.

Respondent further alleges that this Court's Order of Disbarment was entered without hearing and notice, that the findings of the hearing officer appointed in the disciplinary action constituted the final adjudication of the issues and the Respondent was subjected to double jeopardy in that the Hearing Officer entered findings of fact and the Supreme Court did not accept such findings. In sum, Respondent is attempting to attach constitutional import to this Court's failure to adopt the Hearing Officer's findings.

Article 7, Section 4, of the Constitution of Indiana grants this Court original jurisdiction as to the admission and discipline of attorneys. Pursuant to this authority, Rules for the Admission and Discipline of Attorneys have been promulgated, which, inter alia, establish the procedural format of a disciplinary proceeding. Under this format a Hearing Officer receives evidence and may make a recommendation to this Court. However, this being an original action, the Supreme Court must determine issues of fact, which clearly distinguishes the disciplinary proceeding from an appeal. In re Pawlowski, (1959) 240 Ind. 412, 165 N.E.2d 395. The ultimate findings of fact are arrived at through an examination of all matters before the Court, including the transcript; the findings of the Hearing Officer are considered, but not controlling. In re Wireman, (1977) ____ Ind. _____, 367 N.E.2d 1368, cert. denied 436 U.S. 904, 98 S.Ct. 2234, 56 L.ED.2d 402. In re Murray, (1977) Ind.____, 362 N.E.2d 128, appeal dismissed, 434 U.S. 1029, 98 S.Ct. 758, 54

L.Ed.2d 777. In re Pavlowski, Supra. The procedures governing the discipline of attorneys were employed in the disciplinary action leading to the disbarment of the Respondent. Accordingly, we find no merit to his contention of constitutional deprivation by reason of this Court's findings in the disbarment proceeding.

Further asserting that this Court's Order of disbarment is void, Respondent avers that the Court entered the order without examining the exhibits, which he had in the basement or the record of proceeding. This contention is totally absurd. In our prior opinion we commented on Respondent's refusal to return exhibits:

> In the present case, the Respondent, through the customary courtesies extended attorneys of record, obtained the exhibits considered during the hearing stage of this cause. Ostensibly, such exhibits were obtained to allow the Respondent an opportunity to prepare his response to the petitions for review submitted by the Disciplinary Commission and the complainant. Although stating that he would do so and although being requested to do so on several occasions, the Respondent has failed to return the exhibits placed in his custody and care. The Disciplinary Commission, in their brief, has summarized the relevant exhibits and the Respondent has not specifically objected to such summaries. Accordingly, this Court has employed the summaries submitted by the Disciplinary Commission and taken judicial notice of the records of this Court in its review of the Hearing Officer's findings of fact. (In re Crumpacker, (1978) 269 Ind. 630, 637).

The suggestion that the record was not examined likewise is not credible when viewed in the context of our prior opinion.

In view of the above considerations, we find all arguments of Respondent to the effect that this Court's order of disbarment entered November 29, 1978, is void to be without merit. We specifically find such order valid; the Respondent was disbarred as an attorney in this state on that date.

A second general area of contention raised in Respondent's return can be summarized as an assertion that the present contempt proceeding is unconstitutional. Respondent argues that because the unauthorized practice of law could be a crime, the contempt proceeding is unconstitutional in that it does not afford the safeguards available to a criminal defendant, citing State ex rel Indianapolis Bar Assn. v. Fletcher Trust Company, (1936) 211 Ind. 57, 5 N.E.2d 538. Respondent goes on to conclude that IC 33-2-1-4, which specifically gives this Court statutory authority to punish for the contempt, is unconstitutional. This latter allegation is unsupported by authority.

Respondent's reference to State ex rel Indianapolis Bar Assn. v. Fletcher Trust Co., Supra., is misdirected. This prior proceeding involved an

attempt to prosecute the unauthorized practice of law in this court. There was no order of disbarment or any order of this Court. Under such circumstances the Court discharged the defendant after finding that practicing law without being admitted to the bar is unlawful under a statutory provision and, when charged thereunder, a defendant does not stand a summary trial as in a contempt proceeding and is accorded certain rights. The Court thereafter went on to note:

> What we have heretofore said is not inconsistent with the inherent power of this court to punish for contempt. It has the power, but it is limited to those acts which are in actual contempt of this court, and we are of the opinion that the acts charged in the information in the instant case are not in actual contempt of this court. (Id. 211 Ind. 27 at 39).

In view of the above considerations we find the assertion of Respondent to be without merit.

It is not surprising that Respondent fails to cite any authority for his contention that IC 33-2-1-4 is unconstitutional. There is none. There is no doubt this Court possesses inherent and statutory power to punish by fine and imprisonment for contempt of its authority and powers. In re Leonard, (1980) Ind., 413 N.E.2d 228, In re Perrello, (1973) 260 Ind. 26, 291 N.E.2d 698.

The Perrello case also is dispositive of the remaining issue raised by Respondent, to-wit: that the contempt action must be prosecuted in the name of the state.

> The Respondent claims the action is defective because it has not been brought in the name of the State of Indiana. See, State ex rel. Indpls. Bar Assn. v. Fletcher Trust Co., supra; Denny v. State, supra. However, the purpose of that rule is to distinguish between civil contempt proceedings and criminal contempt proceedings. It was clear to all, including the Respondent, that this was a criminal contempt proceeding. See, Allison v. State ex rel. Allison, supra. The action was brought by official of the State appointed by this Court. It was clearly not brought for any private party. Under the circumstances we feel it unnecessary that the State actually be named. The cause was certainly initiated for the public's interest and prosecuted by an arm of state government. See Allison, supra. (In re Perrello, (1973) 260 Ind. 26, 30).

By reason of the above considerations, we now find all of the assertions of Respondent challenging the constitutionality of the present proceedings without merit. Accordingly, we now turn to an examination of the allegations raised in the Verified Information for contempt and the evidence before this Court.

Upon consideration of all matters of record we find that on or about February 27, 1980, the Lake County Recorder's Office received for recording, a real estate mortgage executed by Arthur and Sarah Bayajian as mortgagors. This mortgage was prepared by Respondent's secretary under Respondent's direction, instruction and control. The face of said mortgage contains a notation that it was prepared by Owen M. Crumpacker. The mortgage was signed before Respondent's part time secretary, Josephine Dolatowski, who was a notary. The Respondent offered this mortgage for recording by a letter of February 27, 1980, wherein he requested that the recorded instrument be returned to him. He also advanced the recordation fee by a check signed by him and written on the account of "Crumpacker and Associates Attorneys at Law".

During 1980 Respondent employed Norma Kobus as his secretary. Her duties in that position included taking dictation, typing correspondence, and typing legal pleadings and memoranda at Respondent's request and instruction. On or about September 17, 1980, Respondent sent a letter under his signature to Edward Lukowski, Clerk of the Lake Superior Court in Gary, Indiana, requesting that the Clerk file a petition for Respondent on behalf of Joyce Johnson, in the case of In the Matter of the Estate of Ardinia Upshaw, Estate No. GE 80-100. The letter was typed by Respondent's secretary, Norma Kobus, under Respondent's instruction, direction and control. The petition enclosed with such letter, entitled Petition of Joyce Johnson, was also prepared by Kobus under Respondent's instruction, direction and control.

Respondent's secretary, Kobus, acting under Respondent's direction, instruction and control, prepared three matters on behalf of Mattie Turnipseed. These matters were a motion blank which was filed on October 31, 1980, by Turnipseed in the Lake Superior Court in the case of Thomas and Vivian Upshaw v. Mattie Turnipseed, Cause No. 480-851; a Motion to Vacate and Set Aside Order of October 29, 1980, which motion was filed on October 31, 1980, in the same cause; and a Memorandum to Mattie Turnipseed giving detailed instructions on how the two foregoing matters should be filed.

Respondent's secretary, Norma Kobus, under Respondent's direction, instruction and control, prepared nine legal matters in the cause of Nancy Sue Van Natter b/n/f John Van Natter v. Meyers Plumbing, Inc., Cause No. 580-734 in the Lake Superior Court. These matters were prepared on behalf of Harvey Cleland, President of Meyers Plumbing, and were filed in the Lake Superior Court. The pleadings were as follows: (1) a proposed minute entry for a

motion for a change of venue, which was prepared on or about October 1, 1980, and was filed on October 2, 1980; (2) a Motion for Change of Venue, prepared on or about October 1, 1980, and filed on October 2, 1980; (3) an Answer prepared on or about October 1, 1980, and filed on October 2, 1980; (4) a proposed minute entry whereby Harvey Cleland, as signed by Respondent, struck a county; (5) a proposed minute entry for a motion to strike, prepared on or about October 9, and filed on October 10, 1980; (6) a Motion to Strike and Expunge, filed on October 10, 1980; (7) a proposed minute entry for another motion to strike and expunge, which minute entry was prepared on or about October 31, 1980, and filed on October 31, 1980; (8) a Motion to Strike and Expunge Entry of October 27, 1980 for Want of Notice and Hearing, which motion was filed on October 31, 1980; (9) an affidavit of Harvey Cleland, President, also filed on October 31, 1980.

Respondent's secretary, Kobus, prepared on or about November 7, 1980, a proposed minute entry and a Motion for Protective Order in the cause of Mattie Upshaw Turnipseed and Dallas Perkins v. Thomas Upshaw and Vivian Upshaw, Cause No. 180-1030 in the Lake Superior Court. She prepared these matters under the direction, instruction and control of the Respondent. The motion and proposed minute entry were filed in the Lake Superior Court on November 7, 1980.

In the case of James D. Justak and Barbara J. Justak v. Margaret Justak, Cause No. 580-378 in the Lake Superior Court, Respondent's secretary, Kobus, prepared four legal matters. She prepared such matters on or about September 22, 1980, on behalf of Margaret Y. Justak, under the direction, instruction and control of the Respondent. The four pleadings were as follows: (1) a proposed minute entry for appearance pro se, filing for an Answer and a Cross Complaint; (2) a Motion for Change of Venue from the County; (3) a Counter-Claim; and (4) an Answer. The foregoing matters were filed on or about September 22, 1980.

We also find that on or about October 16, 1979, Respondent wrote a letter to Richard Timmons, Clerk of the United States District Court in Hammond, Indiana, on stationary with a letterhead reading "Owen W. Crumpacker and Associates Attorneys at Law".

On or about May 6, 1980, Respondent drafted and signed a check payable to Robert A. Welch for a witness fee of $41.70. The check named the drawer as "Crumpacker and Associates Attorneys at Law".

Furthermore, we find that the 1980 editions of the Indiana Bell Telephone Yellow Page Directories for four different areas in Lake County, Indiana, listed Respondent, his office address and telephone number under the hearing of "Lawyers". This advertisement appeared in the directories for Hammond, Highland-Griffith-Munster, Gary, and East Chicago-Whiting. Respondent caused said listings to appear by returning a signed telephone billing acknowledgement to the Indiana Bell Telephone publishing agent on or about February 19, 1980.

On or about January 6, 1981, Respondent prepared a proposed minute entry on behalf of August Ignelzi for the case of Bescozzi, Carpenter & Ignelzi, Inc. v. MHE/Indiana, Inc., Cause No. 177-518. On January 6, 1981, Respondent appeared before the Honorable Cordell Pinkerton and offered the proposed minute entry to Judge Pinkerton for his signature. The said proposed minute entry was filed on January 6, 1981.

On or about January 5, 1981, Respondent prepared a Motion for Bill for Costs on Behalf of August Ignelzi. Respondent signed and dated the certificate of service. The motion was filed with the Clerk of the Lake Superior Court on January 6, 1981, in the case of Bescozzi, Carpenter and Ignelzi, Inc., v. MHE/Indiana, Inc.

The foregoing findings establish that following his disbarment on November 29, 1978, Respondent held himself out as a lawyer by advertising as such in the yellow pages of the telephone directories of the population centers in his home county. Respondent corresponded on stationary identifying him as a lawyer and also made payment with checks containing similar designations. During the period of time in issue, the Respondent advised clients by legal memorandum; he prepared legal pleadings on behalf of others and either filed the same or had them filed. Under the guise of having his clients appear pro se, Respondent, in effect, took on their cases and acted on their behalf in a representative capacity. Whether or not he charged any fees for his services cannot affect the foregoing facts. In light of the overwhelming evidence we are left but with one conclusion, following his disbarment on November 29, 1978, the Respondent continued to hold himself out as an attorney and engaged in the practice of law.

Having found from the evidence adduced at trial that Respondent did engage in the practice of law we must determine if such conduct is contemptuous of this Court's order of disbarment.

A criminal contempt can be any action which manifests a disrespect for and defiance of a court. The willful and intentional disobedience of the orders of a court can constitute indirect criminal contempt. In re Lemond, Supra, In re Perrello, Supra. The question of intent is a question of fact to be decided after hearing all the evidence. In re Perrello, Supra.

The Respondent in this case was disbarred on November 29, 1978. Thereafter, he continued to advertise himself as an attorney and continued to act in a representative capacity on behalf of others. Furthermore, Respondent has persisted in not merely disagreeing with the Order of this Court, but in refusing to acknowledge the fact that he has been disbarred. Throughout this proceeding he repeatedly refused to acknowledge such fact as he consistently referred to the opinion and order of disbarment as a "twenty-seven page disciplinary action filed in the office of the Clerk of the Supreme Court of Indiana". It is our conclusion that Respondent's acts, as proven, were willful and intentional disobedience of this Court's Order.

As we stated in Perrello, Supra, "the punishment imposed is a vindication of the Court's authority but we also hope that it will act as a deterrent for . . . all others who might harbor the thought of defying an order of this Court". 240 Ind. 26 at 30. Respondent's blatant disregard for this Court's order disbarring him was evidenced even during the hearing of this proceeding when Respondent tendered payment to a witness on a check designating Owen Crumpacker as an attorney at law. The evidence in this case establishes that Respondent acted in contempt of this Court on twenty-eight occasions. This Court will not tolerate willful and intentional disregard of its orders. We would be remiss in fulfilling our constitutional duties if we allow contempt of this nature to go unpunished. The authority vested in this Court must be recognized and enforced or our judicial system will cease to function as a system of justice. Contempt of this Court has been clearly proven. Accordingly, we now hold that Respondent is guilty of criminal contempt of this Court.

On July 2, 1981, in the course of this proceeding, Respondent was cited for contempt; ruling at that time was taken under advisement. This citation for contempt came after Respondent failed to heed repeated admonishments of the court, thereby disrupting the proceeding. The Disciplinary Commission now asks for a ruling on this matter. Accordingly, we find that Respondent engaged in direct criminal contempt of this Court.

In view of our findings, the Respondent, Owen W. Crumpacker, is sentenced to serve a term of ninety days in the Indiana State Farm for indirect criminal contempt of this Court, sentenced to serve a concurrent term of ninety days in the Indiana State Farm for the direct criminal contempt of this Court, and is further fined in the amount of five hundred dollars ($500.00). Those provisions of law authorizing the diminution of sentence for good time served shall not apply."

Costs of this proceeding are assessed against the Respondent.

Pivarnik, J., not participating.

IN THE

SUPREME COURT OF INDIANA

IN THE MATTER OF	)	
	)	
	)	Cause No. 974 S 187
	)	
OWEN W. CRUMPACKER	)	

ORDER OF COMMITMENT

STATE OF INDIANA	)	
	)	
	)	SS:
	)	
COUNTY OF MARION	)	

TO THE SHERIFF OF THE SUPREME COURT OF INDIANA AND

TO ANY MEMBER OF THE INDIANA STATE POLICE:

This Court, having previously heard evidence submitted on June 29, July 2, July 16, and July 21, 1981, in support of and in opposition to Verified Information for contempt filed in twenty-nine counts by the Disciplinary Commission of this Court; having examined and considered the evidence presented at such hearings and filed under this cause; and having reviewed the pleadings tendered by the parties, including proposed findings of fact presented by each party; now finds that the Respondent, Owen W. Crumpacker is guilty of contempt of this Court in violating this Court's order of disbarment dated November 29, 1978, and guilty of contempt for his conduct during the hearing of this cause on July 2, 1981.

And this Court now fixes Respondent's punishment at ninety (90) days to be served in confinement at the Indiana State Farm at Putnamville, Indiana, for the indirect criminal contempt and a concurrent term of ninety (90) days for the direct criminal contempt of this Court, said confinement to commence on 11th day of February, 1982.

IT IS THEREFORE ORDERED AND ADJUDGED that Respondent, Owen W. Crumpacker is guilty of contempt of this Court for violating its order of disbarment entered November 29, 1978, and for contemptuous conduct during the hearing of this cause on July 2, 1981, and; accordingly, is committed to the Department of Correction for imprisonment at the Indiana State Farm at Putnamville, Indiana, for a period of ninety (90) days for each offense, such terms to be served concurrently from and after the 11th day of February, 1982.

IT IS FURTHER ORDERED that those provisions of law authorizing the diminution of sentence for good time served shall not apply.

DONE at Indianapolis, Indiana, this 11th day of February, 1982.

Richard M. Givan
Chief Justice of Indiana

DeBruler, Hunter, Prentice, J.J., Concur.

Pivarnik, J., Not Participating

IN THE

SUPREME COURT OF INDIANA

FEB 5 1982

IN THE MATTER OF)
) CAUSE NO. 974 S 187
OWEN W. CRUMPACKER)

RECEIVED

FEB 9 1982

ORDER

DENYING "MOTION TO STRIKE AND EXPUNGE ORDER TO APPEAR FOR PRONOUNCEMENT OF JUDGMENT FILED ON JANUARY 27, 1982, FOR LACK OF JURISDICTION OVER THE PERSON OF THE PURPORTED RESPONDENT, OWEN W. CRUMPACKER, AND THE SUBJECT MATTER OF THE PROCEEDINGS".

COMES NOW Owen W. Crumpacker and files his "Motion to Strike and Expunge Order to Appear for Pronouncement of Judgment Filed on January 27, 1982, for Lack of Jurisdiction Over the Person of the Purported Respondent, Owen W. Crumpacker, and the Subject Matter of the Proceedings".

THIS COURT BEING DULY ADVISED IN THE PREMISES now DENIES the "Motion to Strike and Expunge Order to Appear for Pronouncement of Judgment Filed on January 27, 1982, for Lack of Jurisdiction Over the Person of the Purported Respondent, Owen W. Crumpacker, and the Subject Matter of the Proceedings".

DONE AT INDIANAPOLIS, INDIANA this 5 day of February, 1982.

Richard M. Givan

RICHARD M. GIVAN

Chief Justice of Indiana

IN THE

SUPREME COURT OF INDIANA

FILED
JAN 27 1982
Clerk of the Indiana Supreme and Court of Appeals

IN THE MATTER OF)
) Cause No. 974 S 187
OWEN W. CRUMPACKER)

ORDER TO APPEAR FOR PRONOUNCEMENT OF JUDGMENT

This Court, on its own motion, having previously heard the contempt proceeding brought under this cause and examined all matters which have been filed by the parties, now finds that the Respondent should be directed to appear for the pronouncement of this Court's judgment in the pending contempt proceeding.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Respondent, Owen W. Crumpacker, be and he is hereby ordered to appear before this Court at the Supreme Court Chambers, State House, Indianapolis, Indiana, on the 11th day of February, 1982, at 10:30 A.M. for pronouncement of judgment in this cause.

IT IS FURTHER ORDERED that the Clerk of this Court issue copies of this Order to the Sheriff of Lake County, who shall personally serve this Order upon Respondent by reading the same to him and make the return of such service to this Court.

IT IS LASTLY ORDERED that the Clerk of this Court shall forward a copy of this Order to the Disciplinary Commission of this Court and all attorneys of record under this cause.

DONE this 27 day of January, 1982, at Indianapolis, Indiana.

Richard N. Givan
Chief Justice of Indiana

STATE OF INDIANA

TO THE SHERIFF OF Lake County

You are hereby commanded to notify Owen W. Crumpacker, 6255 Hohma

Hammond, Indiana 46324

[illegible]

by reading this ORDER and by delivering to Owen W. Crumpacker

a copy of the order of the Supreme Court of Indiana, [illegible]

[illegible]

In the Matter of Owen W. Crumpacker

No. 974S187. [illegible]

[illegible]

STATE OF INDIANA
COUNTY OF MARION SS:

I, Marjorie H. O'Laughlin, Clerk of the Supreme Court of the State of Indiana, do hereby certify that the attached and foregoing is a true and complete copy of the order of the court.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of January, 19 82.

Marjorie H. O'Laughlin
Clerk Supreme Court

Came to hand _____, 19____

Served on the within _____

_____

this _____ day of _____, 19____.

_____
Sheriff

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF OWEN W. CRUMPACKER	) SS:	CAUSE NO. 974 S 187 (ORIGINAL)

NOTICE OF APPEAL

Notice is hereby given that Owen W. Crumpacker, respondent, above-named, hereby appeals to the Supreme Court of the United States from the finding and judgment of the Supreme Court of Indiana entered on February 11, 1982, convicting him of the crime of indirect criminal contempt.

Said respondent, Owen W. Crumpacker, appeals to the Supreme Court of the United States as a matter of right under 28 U.S.C. 1257 and 28 U.S.C. 2102. The notice of appeal is prepared, served and filed pursuant to Rules 10 and 28 of the Revised Rules of the Supreme Court of the United States, effective June 30, 1980, amended to December 31, 1980.

Owen W. Crumpacker
6255 Hohman Avenue
Hammond, Indiana 46324
Tel: (219) 932-0825

Defendant and Respondent in
the Above-Captioned Proceedings
(Pro Se)

PROOF OF SERVICE

Served copies of the above and foregoing notice upon the Supreme Court of Indiana by filing copies of the same with its clerk, Marjorie O'Laughlin, Room 217 State House, Indianapolis, Indiana, 46204 by certified mail, return receipt requested, as authorized by Trial Rule 5(E)(3); and the Indiana Supreme Court Disciplinary Commission by mailing a copy to its Executive Secretary, Sheldon A. Breskow, Room 814 ISTA Building, 140 W. Market St., Indianapolis, Indiana 46204, this 5th day of February 1982.

Owen W. Crumpacker

lg

RECEIVED
JUL 12 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 82 5046

OWEN W. CRUMPACKER, Appellant,

v.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA FROM THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF INDIANA CONVICTING APPELLANT OF DIRECT AND INDIRECT CRIMINAL CONTEMPT IN AN ORIGINAL PROCEEDING CONDUCTED BY THE SUPREME COURT OF INDIANA

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The appellant, Owen W. Crumpacker, who was held in the Department of Correction, Indiana State Farm, from February 11, 1982 through May 11, 1982, asks leave to file the Jurisdictional Statement on an appeal from the final judgment of the Indiana Supreme Court without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

Appellant's affidavit in support of this motion is attached hereto.

Owen W. Crumpacker
6255 Hohman Avenue
Hammond, Indiana 46324
Pro Se

Office - Supreme
FILE
AUG 13 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-5046

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

OWEN W. CRUMPACKER,
Appellant,

V.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

MOTION TO DISMISS OR AFFIRM

SHELDON A. BRESKOW
814 I.S.T.A. Building
150 West Market Street
Indianapolis, Indiana 46204

Attorney for Appellee,
Indiana Supreme Court
Disciplinary Commission

No. 82-5046

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

OWEN W. CRUMPACKER,
Appellant,

V.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

MOTION TO DISMISS OR AFFIRM

The Appellee respectfully moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Indiana on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

OPINIONS BELOW

The decision and opinion giving rise to Appellant's appeal was made and entered by the Supreme Court of Indiana on February 11, 1982. *In The Matter of Owen W. Crumpacker*, ____ Ind. ____, 431 N.E. 2d 91 (1982). Said decision found Appellant in indirect contempt of court for continuing to practice law in the State of Indiana after an order of disbarment had been entered by the Supreme Court of Indiana. *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36, cert. denied, 444 U.S. 979, 100 S.Ct. 481 (1978). Said order of disbarment was entered on November 29, 1979. Said decision also found the Appellant in direct contempt of court.

Previously, Appellant herein filed a *Petition For A Writ of Certiorari to the Supreme Court of Indiana*, challenging the constitutionality of the order of disbarment. On December 3, 1979, the *Petition For Writ of Certiorari* was denied. On January 23, 1981, the Indiana Supreme Court Disciplinary Commission filed its *Verified Information For Contempt And Petition For Order to Show Cause* against Appellant, alleging that Appellant continued to practice law in defiance of the order of disbarment. On February 10, 1981, *The Order To Show Cause* was issued and, thereafter, beginning on June 29, 1981, after many continuances granted on behalf of Appellant, the matter was heard.

JURISDICTION

Appellee does not agree with Appellant's statement of the grounds on which the jurisdiction of the Court is invoked. Appellee concedes that the Supreme Court of the United States has jurisdiction of this matter.

STATUTES INVOLVED

The Appellant has fairly summarized those provisions of the various constitutional provisions, statutes and court

rules he claims to have application to the questions presented.

QUESTIONS PRESENTED

The Appellee will respond below in its Statement of the case to each of the eight (8) questions presented by Appellant.

STATEMENT OF THE CASE

Appellant's "Statement of the Case" appears on pp. 16-32, inclusive, of his Jurisdictional Statement. A substantial part of Appellant's Statement is mere argument and surplusage. Some of Appellant's Statement is erroneous. For example, it is erroneous that the Supreme Court of Indiana "instituted and prosecuted criminal proceedings against a private citizen...". The record shows that the contempt proceeding was initiated by the filing of a *Verified Information For Contempt and Petition To Show Cause* by the Indiana Supreme Court Disciplinary Commission and that said proceeding was prosecuted by the same. For additional example, Appellant's Statement is erroneous and misleading where he asserts that "The Supreme Court of Indiana, for the first time in any recorded decision, has organized itself into a trial court to charge, try, and convict appellant...of the statutory crimes of both direct and indirect criminal contempt". See, e.g., *In The Matter of Biagio J. Perrello*, ___ Ind. ___, 386 N.E. 2d 174 (1979).

A major part of Appellant's Statement is immaterial and irrelevant to the contempt proceeding, which is the subject of this appeal. For example, Appellant attempts to relitigate his disbarment, continuously referring to the Court's order and decision as "the 27 page disciplinary action" and as being "void". The record shows that the Appellant was disbarred by order of the Supreme Court of Indiana and that said order was left undisturbed by this

Court. *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36, cert. denied 100 S.Ct. 481, 444 U.S. 979, 61 L Ed. 2d 406 (1978).

The Appellant, Owen W. Crumpacker, was disbarred by order of the Supreme Court of Indiana on November 29, 1978. Thereafter, Appellant continued to practice law in the State of Indiana in defiance of said order of disbarment. On February 11, 1982, the Supreme Court of Indiana entered its opinion and order finding Appellant to be in contempt of court for his defiance of the 1978 order of disbarment. *In The Matter of Owen W. Crumpacker*, ____ Ind. ____, 431 N.E 2d 91 (1982).

ARGUMENT

The Appellant first asserts that Burns Indiana Statutes Annotated, Code Edition, 33-2-1-4 (4-110) is violative of the IV, V, VI, VIII, and XIV Amendments to the United States Constitution. Appellant fails to discuss this assertion in context of the contempt proceeding. Instead, Appellant attempts to discuss and relitigate the Supreme Court of Indiana's order of disbarment. As said order has been determined to be final by the Supreme Court of Indiana, and, as the United States Supreme Court declined its opportunity to review said order, Appellant's discussion is immaterial and moot. *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36 (1978). Appellant fails to raise a substantial federal question by his first assertion.

The Appellant next asserts, by Question 2, that the Supreme Court of Indiana does not have jurisdiction "to institute, prosecute, and convict a private citizen of the statutory crimes of direct and indirect criminal contempt". This question is not presented by the record below. The record of the case below demonstrates that the Supreme Court of Indiana did not institute or prosecute the contempt proceeding. The record of the case below demonstrates that the Indiana Supreme Court Disciplinary Commission

instituted and prosecuted the contempt proceeding before the Supreme Court of Indiana. Appellant fails to raise a substantial federal question by the second question presented on appeal.

The Appellant argues, by Question 3, that the "void character" of the disbarment order may be urged as a defense in a prosecution for alleged contempt for violating that order. This question is not presented by the record below. The Supreme Court of Indiana disbarred Appellant on November 29, 1978, *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36 (1978). On December 3, 1979, the United States Supreme Court denied Appellant's *Petition For Writ of Certiorari*, thereby declining its opportunity to review the disbarment order. It is an established fact that Appellant was disbarred as an attorney in the State of Indiana. Appellant fails to raise a substantial federal question by the third question presented by appeal.

Appellant next raises the issue, by Question 4, as to whether the Supreme Court of Indiana can act "as judge of criminal charges filed and prosecuted by it". As discussed above, this question is not presented by the record below. The record below demonstrates that the Indiana Supreme Court Disciplinary Commission instituted and prosecuted the contempt proceeding before the Supreme Court of Indiana. Furthermore, under Indiana law, a finding of contempt is not a criminal conviction. *State v. Shumaker*, 200 Ind. 716, 161 N.E. 408 (1923), cited with approval, *Owen W. Crumpacker v. Donald L. Hudkins*, No. TH82-60-C, slip op. at 2 (s.d. Ind. July 12, 1982). Appellant has failed to raise a substantial federal question by the fourth question presented by appeal.

Appellant asserts, by Question 5, that the Supreme Court of Indiana was obliged to afford Appellant compulsory process for obtaining witnesses in his favor. There is nothing in the record below indicating that such a request was made by Appellant and denied by said court. Appellant has failed, with respect to this issue, to indicate

with specificity the state in the proceedings at which Appellant raised said issue and, as such, has not complied with Supreme Court Rule 15 (1)(b). Appellant has failed to raise a substantial federal question by this issue.

Appellant asserts by Question 5, that the Supreme Court of Indiana was obliged to grant his request for continuance where his counsel had withdrawn from the case five (5) days prior to the trial. It is a well-settled rule of law that a trial judge has a large measure of discretion in determining whether or not a continuance will be granted. It is an equally accepted rule of law that this discretion is fully recognized in a situation like the one at hand where the continuance was requested because the defendant's counsel had withdrawn from the case. See, e.g., *Ungar v. Sarafite*, 376 U.S. 575, 11 L Ed 2d 921, 84 S.Ct. 841 (1964), *Gray v. U.S.* 14 F 2d 366 (1926), *U. S. v. Rosenstein*, 34 F 2d 630 (1929), *Hartsfield v. State of Indiana*, 228 Ind. 616, 94 N.E. 2d 453 (1950). In *Ungar v. Sarafite*, 376 U.S. 575, 11 L Ed 2d 921, 84 S.Ct. 841 (1964), the United States Supreme Court stated the above rule as follows:

> "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. (cite omitted)... There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances presented to the trial judge at the time the request is denied."

Further, this Court has stated that "absent a clear abuse of discretion from which prejudice results", the trial court's discretion will not be disturbed on appeal, *U.S. v. Carter*, 453 F 2d 402, (6th Cir. 1971).

The Supreme Court of Indiana sat as a trial court in the contempt proceeding of Appellant. The circumstances presented to the Court at the time Appellant's Request For

Continuance was denied are as follows: "The Order to Show Cause was issued on February 10, 1981; thereafter, several hearing dates were scheduled, but on each occasion continued at the request of Respondent or his counsel of record, John Lyons". *In The Matter of Owen W. Crumpacker* (supra), 431 N.E. 2d at 91. On June 22, 1981, Mr. Lyons, Appellant's attorney, filed a Motion For Leave To Withdraw with the court showing the court that he had made "serious and numerous efforts to meaningfully communicate with the Respondent over the past several months, which efforts have been fruitless" and that "on the 28th day of May, 1981 he communicated by mail with the Respondent announcing his intention of withdrawing his appearance and citing the reasons therefore and further inviting some communication from the Respondent or reaction, which letter evoked no communication or reaction". On June 22, 1981, said Motion For Leave to Withdraw was granted. Additionally, it is abundantly clear from the record that Appellant and Mr. Lyons did not share the typical attorney-client relationship; Appellant had failed to heed the advice of his counsel, Appellant had engaged in the preparation of the trial without the assistance of counsel. Appellant and Lyons have had such an "on again-off again" relationship in this disbarment matter since 1975. Appellant cannot show, in light of these circumstances, that the Court's action in not granting a continuance resulted in prejudice to Appellant. Further, Appellant knew of Lyons' intention to withdraw his appearance approximately one (1) month before such withdrawal was made and, yet, made no attempt during that time to contact either Mr. Lyons or other counsel. Appellant's request for a continuance was done for no ligitimate reason and in an effort to delay the proceedings unnecessarily. The Appellant has failed to raise a substantial federal question by the fifth question presented by appeal.

Appellant asserts, by Question 6, that the denial of his written request for oral argument deprived him of his right under the 6th Amendment to the United States Constitution. The record below indicates that Appellant, after making a narrative statement covering some 83 pages in the transcript, rested his case without reserving the right to make closing argument. The Supreme Court of Indiana thereupon directed both sides to file written findings of fact. The Appellant thereafter filed his findings of fact and requested an oral argument as to the "special findings". Appellant cites *Herring v. New York*, 422 U.S. 852, 95 Supreme Ct. 2550 (1975), as the controlling authority for his position. *Herring* stands for the proposition that in a criminl trial defense counsel has a constitutional right to make closing argument. Appellant had no such "right" in this instance, among other reasons, because the contempt proceeding was not criminal in nature *(State v. Shumaker, supra)* and because Appellant had fully and at length addressed the Court in the form of final argument in his narrative testimony. Appellant has failed to raise a substantial federal question by the 6th Question presented by appeal.

Appellant asserts, by Question 7, that the order of disbarment was of a "vague and indefinite character". There is nothing vague and indefinite about the order of disbarment. Appellant has never before exhibited a lack of understanding as to the meaning of the order. Indeed, he states that he complied with the order, giving notice "advising every client that Appellant was unable to continue to represent them because of the disciplinary action taken against him. The procedures outlined in Admission and Discipline Rule 23, §26, etc. were followed to the letter". Appellant has failed to raise a substantial federal question by the 7th Question presented by appeal.

Lastly, Appellant claims that it was necessary for the judgment of the Supreme Court of Indiana to be pronounced to him in person. The record of the case below

demonstrates that the judgment was pronounced to him in person. On January 27, 1982, the Appellant received notice of an *Order To Appear for Pronouncement of Sentence* and appeared, on February 11, 1982, for said pronouncement. Appellant infers that it was his constitutional right to be present when the Judges were voting on their decision. Appellant cites no authority for this unusual position and presents no logic to support the same. Appellant has failed to raise a substantial federal question as to this issue.

CONCLUSION

Appellant has failed to raise any substantial federal questions by his appeal and, therefore, has failed to invoke the jurisdiction of the Supreme Court of the United States. Additionally, Appellant has failed to demonstrate by record or by argument any right to review.

Respectfully submitted,

Sheldon A. Breskow
Executive Secretary,
Indiana Supreme Court
Disciplinary Commission